TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 228

THE CHIPPEWA INDIANS OF MINNESOTA, APPELLANTS,

vs.

THE UNITED STATES AND THE RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA, (INTERVENORS)

APPEAL FROM THE COURT OF CLAIMS

FILED JULY 25, 1936.

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. H-76

THE CHIPPEWA INDIANS OF MINNESOTA, Plaintiffs,

vs.

THE UNITED STATES, Defendant

I. PETITION—Filed Feb. 26, 1927

Petitioners, the Chippewa Indians of Minnesota, respectfully represent and show unto the Court:

1. That plaintiffs constitute a designated class of persons designated and described as "all the Chippewa Indians in the State of Minnesota" in an agreement or agreements duly entered into with the United States and hereinafter more particularly described, and therein declared to be the sole owners and beneficiaries of the net funds received and to be received from the sale and disposition of the lands and timber thereon ceded to the United States in trust, under said agreement or agreements, as hereinafter set out, and bring this suit under and by virtue of the authority contained in an Act of Congress approved May 14, 1926 (44 Stat. at L. 555), which is, in words and figures as follows, to wit:

"[Public—No. 228—69th Congress]

["H. R. 178]

"An Act Authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party as in other cases, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of the Act of January 14, 1889

[fol. 2] (Twenty-fifth Statutes at Large, page 642), or arising under or growing out of any subsequent Act of Congress in relation to Indian affairs which said Chippewa Indians of Minnesota may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

"Sec. 2. Any and all claims against the United States within the purview of this Act shall be forever barred unless suit or suits be instituted or petition filed as herein provided in the Court of Claims within five years from the date of the approval of this Act, and such suit or suits shall make the Chippewa Indians of Minnesota party plaintiff and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the said Chippewa Indians approved in accordance with existing law; and said contract shall be executed in their behalf by a committee or committees to be selected by said Chippewa Indians as hereinafter provided. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Chippewa Indians to such treaties, papers, correspondence, or records as they may require in the prosecution of any suit or suits instituted under this Act.

"Sec. 3. In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Chippewa Indians, and any payment or payments which may have been made by the United States upon any claim against the United States by said Indians shall not operate as an estoppel, but may be pleaded as an offset in such suit or suits as may gratuities, if any, paid to or expended for said Indians subsequent to January 14, 1889.

"Sec. 4. If it be determined by the court that the United States, in violation of the terms and provisions of any law, treaty, or agreement as provided in section 1 hereof, has unlawfully appropriated or disposed of any money or other property belonging to the Indians, damages therefor shall be confined to the value of the money or other property at the time of such appropriation or disposal, together

[fol. 3] with interest thereon at 5 per centum per annum from the date thereof; and with reference to all claims which may be the subject matter of the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Chippewa Indians in and to such money or other property.

"Sec. 5. If in any suit by all the Chippewas of Minnesota against the United States it appears to the court that any band or bands of said Indians are, or claim to be, the exclusive legal or equitable owners, or are entitled to, or claim, a legal or equitable interest greater than an equal distributive share with all the Chippewa Indians of Minnesota, in the proceeds of any judgment or decree that may be entered or passed in settlement of any claims submitted hereunder, the court may permit, or of its own motion compel said band or bands to be made parties to any such suit, so that their rights may be fully and finally determined: Provided, however, That nothing herein contained shall be construed as conferring jurisdiction on the court to entertain and hear complaints or claims of a purely individual nature. In the event that any band or bands of said Indians are made parties to any suit herein authorized, the Secretary of the Interior shall ascertain, in such manner as he may deem best, the attorney desired by a majority of said Indians and shall permit the employment of an attorney under contract to represent them as provided by existing law, the compensation to be paid said attorney to be fixed by the Secretary of the Interior, and paid out of any money in the Treasury to the credit of said band or bands of said Indians.

"Sec. 6. Authority is hereby given for the employment of not to exceed two attorneys or firms of attorneys to represent the Chippewa Indians of Minnesota in the prosecution of any such suit. Under the direction of the Secretary of the Interior the Indians belonging on the White Earth Reservation are authorized to select a committee consisting of five of their members, and all the other Chippewa Indians in Minnesota are authorized to select a like committee from their members. Each committee so selected, or a majority thereof, is authorized to designate

an attorney or firm of attorneys and to execute a contract [fol. 4] with such attorney or firm in accordance with section 2 hereof.

"Sec. 7. The two attorneys or firms of attorneys authorized to be employed under section 6 shall each receive, during their employment, compensation at the rate of $6,000 per annum, for a period of not exceeding five years, payable in monthly installments as the same become due, and the Secretary of the Treasury is hereby authorized and directed to pay said amounts or installments out of the trust funds standing to the credit of said Indians in the Treasury of the United States, and upon the final determination of said suit the Court of Claims may separately allow said attorneys, or firms of attorneys, such additional compensation as it may deem just and proper considering the nature, extent, character, and value of all services rendered, but in no event shall said additional compensation for the two attorneys or firms of attorneys be in excess of 5 per centum of the total amount recovered; and in no event shall such additional compensation for the two attorneys or firms of attorneys exceed $40,000: Provided, That any such additional compensation shall be fixed by said court in its decree and shall be paid by the Secretary of the Treasury as herein authorized from the trust funds of said Indians standing to their credit in the Treasury of the United States.

"Sec. 8. All actual and necessary expenses incurred in the prosecution of said suit by the attorney or attorneys so employed to represent the Chippewa Indians of Minnesota shall be paid by the Secretary of the Treasury, as herein authorized as they arise out of the funds standing to the credit of said Indians in the Treasury of the United States upon first being allowed by said court and certified to the Secretary of the Interior.

"Sec. 9. Should either of the Indian committees referred to in section 6 hereof be unable or unwilling within one year from the approval by the Secretary of the Interior of the selection of said committees, to designate an attorney or firm of attorneys, the Commissioner of Indian Affairs and the Secretary of the Interior, on behalf of the Indians, are hereby authorized to execute a contract with an attorney

or attorneys under such terms and conditions as they may deem advisable, not inconsistent with the terms of this Act,

[fol. 5] "Sec. 10. The proceeds of all amounts, if any, recovered for said Indians shall be deposited in the Treasury of the United States to the credit of the Indians decreed by said court to be entitled thereto, and shall draw interest at the rate of 5 per centum per annum from the date of the judgment or decree. The costs incurred in any suit hereunder shall be taxed against the losing party; if against the United States such costs shall be included in the amount of the judgment or decree, and if against said Indians shall be paid by the Secretary of the Treasury out of the funds standing to their credit in the Treasury of the United States.

"Approved, May 14, 1926."

2. On January 14, 1889, and for many years prior thereto, various bands or tribes of Chippewa Indians, formerly a part of the great Chippewa tribe, occupied twelve reservations lying and situated within the limits of the State of Minnesota, which said reservations embraced all the lands within the limits of said State to which the Indian title had not been extinguished. Pursuant to authority contained in the Act of May 15, 1886 (24 Stat. 44), the United States endeavored to secure agreements with said bands or tribes of Indians, occupying said twelve reservations, for a readjustment of their land holdings. The agreements negotiated proved unsatisfactory, and the Congress of the United States conceived a definite plan for the consolidation of all the land holdings of all the different bands or tribes of Chippewa Indians, situated in the State of Minnesota, for the termination of all tribal governments and tribal relations, to clothe them with full citizenship, and for the equal distribution of said lands, or the proceeds received therefrom, share and share alike among the individual members of said bands or tribes, and their issue thereafter born. To carry into effect said plan, the Act of January 14, 1889 (25 Stat. 642), was enacted into law, said act being in words and figures as follows, to-wit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress as-

sembled, That the President of the United States is hereby authorized and directed, within sixty days after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose [fol. 6] duty it shall be as soon as practicable after their appointment to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; and such cession and relinquishment shall be deemed sufficient as to each of said several reservations, except as to the Red Lake Reservation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; and provided that all agreements therefor shall be approved by the President of the United States before taking effect: Provided, further, That in any case where on allotment in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deprived thereof or disturbed therein except by his own individual consent separately and previously given, in such form and manner as may be prescribed by the Secretary of the Interior. And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, and for the purpose of making the allotments and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and before completing the same, make an accurate census of each tribe or band, classifying them into male and female adults, and male and female minors; and the minors into those who are orphans and those who are not orphans, giving the exact numbers of each class, and

making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior, and the other with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States shall be deemed full and [fol. 7] ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided.

"Sec. 2. That the said commissioners shall, before entering upon the discharge of their duties, each give a bond to the United States in the sum of ten thousand dollars, with sufficient sureties, to be approved by the Secretary of the Interior, and conditioned for the faithful discharge of their duties under this act, and they shall also each take an oath to support the Constitution of the United States, and to faithfully discharge the duties of their office, which bonds and oaths shall be filed with the Secretary of the Interior. Said commissioners shall be entitled to a compensation of ten dollars per day for each day actually employed in the discharge of their duties, and for their actual traveling expenses and board, not exceeding three dollars per day. Said commissioners shall also be authorized to employ a competent interpreter while engaged in the performance of their duties, at a compensation and allowance to be fixed by them, not in excess of that allowed to each of them under this act.

"Sec. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty seven, entitled "An Act for the allotment of lands in severalty to Indians on the various reservations and to extend the protection of the laws of the United States

and the Territories over the Indians, and for other purposes; and all allotments heretofore made to any of said Indians on the White Earth Reservation are hereby ratified and confirmed with the like tenure and condition prescribed for all allotments under this act: Provided, however, that [fol. 8] the amount heretofore allotted to any Indian on White Earth Reservation shall be deducted from the amount of allotment to which he or she is entitled under this act; Provided further, that any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

"Sec. 4. That as soon as the cession and relinquishment of said Indian title has been obtained and approved as aforesaid, it shall be the duty of the Commissioners of the General Land Office to cause the lands to ceded to the United States to be surveyed in the manner provided by law for the survey of public lands, and as soon as practicable after such survey has been made, and the report, field-notes and plats thereof filed in the General Land Office, and duly approved by the Commissioner thereof, the said Secretary of the Interior, upon notice of the completion of such surveys, shall appoint a sufficient number of competent and experienced examiners, in order that the work may be done within a reasonable time, who shall go upon said lands thus surveyed and personally make a careful, complete, and thorough examination of the same by forty-acre lots, for the purpose of ascertaining on which lots or tracts there is standing or growing pine timber, which tracts on which pine timber is standing or growing for the purposes of this act shall be termed "pine lands," the minutes of such examination to be at the time entered in books provided for that purpose, showing with particularity the amount and quality of all pine timber standing or growing on any lot or tract, the amount of such pine timber to be estimated by feet in the manner usual in estimating such timber, which estimates and reports of all such examinations shall be filed with the Commissioner of the General Land Office as a part of the permanent records thereof, and thereupon that officer shall cause to be made a list of all such pine lands, describing each forty-acre lot or tract

thereof separately, and opposite each such description he shall place the actual cash value of the same, according to his best judgment and information, but such valuation shall not be at a rate of less than three dollars per thousand feet, board measures of the pine timber thereon, and there- [fol. 9] upon such lists of lands so appraised shall be transmitted to the Secretary of the Interior for approval, modification, or rejection, as he may deem proper. If the appraisals are rejected as a whole then the Secretary of the Interior shall substitute a new appraisal and the same or original list as approved or modified shall be filed with the Commissioner of the General Land Office as the appraisal of said lands, and as constituting the minimum price for which said lands may be sold, as hereinafter provided, but in no event shall said pine lands be appraised at a rate of less than three dollars per thousand feet board measure of the pine timber thereon. Duplicate lists of said lands as appraised, together with copies of the field-notes, surveys, and minutes of examinations shall be filed and kept in the office of the register of the land office of the district within which said lands may be situated, and copies of said lists with the appraisals shall be furnished to any person desiring the same upon application to the Commissioner of the General Land Office or to the register of said local land office.

"The compensation of the examiners so provided for in this section shall be fixed by the Secretary of the Interior, but in no event shall exceed the sum of six dollars per day for each person so employed, including all expenses.

"All other lands acquired from the said Indians on said reservations other than pine lands are for the purposes of this act termed 'agricultural lands.'

"Sec. 5. That after the survey, examination and appraisals of said pine lands has been fully completed they shall be proclaimed as in market and offered for sale in the following manner: The Commissioner of the General Land Office shall cause notices to be inserted once in each week for four successive weeks in one newspaper of general circulation published in Minneapolis, St. Paul, Duluth, and Crookston, Minnesota; Chicago, Illinois; Milwaukee, Wisconsin; Detroit, Michigan; Philadelphia, and Williamsport, Pennsylvania and Boston, Massachusetts, of the sale of said lands at public auction to the highest bidder for cash

at the local land office of the district within which said lands are located, said notice to state the time and place and terms of such sale. At such sale said lands shall be offered in forty-acre parcels, except in case of fractions containing either more or less than forty acres, which shall [fol. 10] be sold entire. In no event shall any parcel be sold for a less sum than its appraised value. The residue of such lands remaining unsold after such public offering shall thereafter be subject to private sale for cash at the appraised value of the same upon application at the local land office.

"Sec. 6. That when any of the agricultural lands on said reservation not allotted under this act nor reserved for the future use of said Indians have been surveyed, the Secretary of the Interior shall give thirty days' notice through at least one newspaper published at Saint Paul and Crookston, in the State of Minnesota, and, at the expiration of thirty days, the said agricultural lands so surveyed, shall be disposed of by the United States to actual settlers only under the provisions of the homestead law: Provided, That each settler under and in accordance with the provisions of said homestead laws shall pay to the United States for the land so taken by him the sum of one dollar and twenty-five cents for each and every acre, in five equal annual payments, and shall be entitled to a patent therefor only at the expiration of five years from the date of entry, according to said homestead laws, and after the full payment of said one dollar and twenty-five cents per acre therefor, and due proof of occupancy for said period of five years; and any conveyance of said lands so taken as a homestead, or any contract touching the same, prior to the date of final entry, shall be null and void: Provided, That nothing in this act *act* shall be held to authorize the sale or other disposal under its provision of any tract upon which there is a subsisting, valid, preemption, or homestead entry, but any such entry shall be proceeded with under the regulations and decisions in force at the date of its allowance, and if found regular and valid, patents shall issue thereon: Provided, That any person who has not heretofore had the benefit of the homestead or pre-emption law, and who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either of said laws may

make a second homestead entry under the provisions of this act.

"Sec. 7. That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making [fol. 11] the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares: Provided, That Congress may, in its discretion, from time to time during the said period of fifty years, appropriate for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made, until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars,

less any actual interest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years be expended in procuring live-stock, teams, farming implements, and seed for such of the Indians to the extent of their shares as [fol. 12] are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the United States shall be fully reimbursed out of such excess, for all the advances of interest made as herein contemplated and other expenses hereunder.

"Sec. 8. That the sum of one hundred and fifty thousand dollars is hereby appropriated, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal and allotments, and the first annual payment of interest herein contemplated and provided for, which money shall be expended under the direction of the Secretary of the Interior in conformity with the provisions of this act. A detailed statement of which expenses, except the interest aforesaid, shall be reported to Congress when the expenditures shall be completed.

"Approved, January 14, 1889."

3. Within the time prescribed in section one of said act, the President, as therein authorized, appointed commissioners who duly qualified, and entered upon the discharge of their duties; that said Commissioners, while negotiating with each of the different bands or tribes of Chippewa Indians in the State of Minnesota, prepared census rolls as in said act provided, and concluded agreements with all the different bands or tribes of said Indians in strict conformity with the provisions of said act, the said act being incorporated in each agreement and expressly accepted and assented to by each and every band or tribe of said Indians, parties thereto. The agreements duly executed by the Commissioners and the Indians were transmitted to the President, accompanied by the complete record of the negotiations and the reports of the Commissioners and the Secretary of the Interior thereon, and were

on March 4, 1890, approved by the President and thereupon took effect. By the plain tenor of said agreements there was an immediate cession of all the lands lying and situated within the Red Lake Reservation except sufficient lands to make allotments to the then Red Lake Indians who, as shown by the census rolls prepared by said Commissioners, and in fact, numbered 1168. On account of the swampy and [fol. 13] heavily timbered character of the land lying and situated around Red Lake, and solely in order to enable the Red Lake Indians to select suitable agricultural lands for their allotments, the Commissioners deemed it advisable to temporarily reserve a much larger acreage than in their judgment, and in fact, would be required to make the allotments to the Red Lake Indians provided for by said agreements, and accordingly said Commissioners temporarily reserved an area comprising approximately 663,452 acres, and nearly seven times the acreage required to make said allotments, and which allotments were to be made as soon as practicable after the census had been taken and the cessions and relinquishments obtained, approved and ratified as specified in section one of said act and said agreements.

4. Plaintiffs aver that by said agreements, so entered into with all the different bands or tribes of Chippewa Indians in the State of Minnesota, there was an immediate and complete cession of all right, title and interest of all the different bands or tribes of said Indians and of the United States in and to all ceded lands, in trust for the exclusive use and benefit of a well-defined class designated in the agreements as "All the Chippewa Indians in the State of Minnesota," plaintiffs herein; that the trust thus created contained perfect limitations for the allotment of lands to all Indians entitled thereto, the sale of all ceded property and the disposition of all proceeds to be derived therefrom among said designated class, and that all that remained was the mere performance by the defendant, through its designated officers, of the ministerial duty of administering the property in conformity with the plain terms of the said agreements. And plaintiffs aver that said lands temporarily reserved for the purposes described in the third paragraph of this petition were a part of the corpus of said trust estate, subject only to the right of said

Red Lake Indians to allotments of land therefrom as in said agreements provided.

5. Plaintiffs aver that under date of November 21, 1892, the President of the United States, unmindful of the duties and obligations of the defendant, United States, to plaintiffs, under and by said agreements, did without authority of law, withdraw by executive order 2,982.64 acres of the lands theretofore ceded under said agreements approved [fol. 14] March 4, 1890, and did include said lands so unlawfully withdrawn in said large area theretofore temporarily reserved by the Commissioners on the Red Lake Reservation for the purposes set out in paragraph 3 of this petition.

6. Plaintiffs aver that the defendant, through its officers and agents, in disregard of its contractual obligations and the plain duty imposed upon defendant by Section 3 of said act of January 14, 1889, and Section 2 of the act of February 8, 1887, which acts were embodied in and made a part of said agreements, did not permit or require the Indians residing on or belonging to the Red Lake Reservation to take their allotments in severalty, but did wrongfully hold said large area comprising approximately 663,452 acres reserved by said Commissioners for the purposes aforesaid, and the 2,982.64 acres previously ceded to the United States and wrongfully withdrawn and reserved by said Executive Order of November 21, 1892, as a closed reservation and did wrongfully hold the members of said Red Lake band as tribal Indians, and plaintiffs aver that while said defendant so wrongfully held said lands as a closed reservation and the members of said band as tribal Indians, the then Mayor of Thief River Falls, Minnesota, under date of January 30, 1902, addressed a communication to the Secretary of the Interior, transmitting a petition of the City Council of Thief River Falls, Minnesota, requesting the Secretary to appoint an Indian inspector to negotiate with the Indians on the diminished Red Lake Reservation for the cession of about eleven (11) townships, lying west of the westerly line of Beltrami County, to be subject to entry under the Homestead laws of the United States, the moneys derived therefrom to be devoted exclusively to the benefit of the Red Lake Indians. This communication, and the accompanying petition, were endorsed by all the

[illegible]en members of the Minnesota delegation in Congress and transmitted to the Secretary of the Interior. The about eleven (11) townships which the petition sought to secure the cession of were a part of the identical lands temporarily reserved by the Commissioners appointed under the act of January 14, 1889, for the purpose set out in paragraph three of this petition. Defendant, through its then Secretary of the Interior, unmindful of the rights of all the Chippewa Indians in the State of Minnesota in and [fol. 15] to said approximately 666,434.64 acres of land, under date of February 10, 1902, instructed United States Indian Inspector, James McLaughlin, to proceed to the Red Lake Reservation and negotiate with the Red Lake and Pembina bands of Chippewa Indians residing on and belonging to said reservation, for the cession of said about eleven (11) townships of said lands. Inspector McLaughlin, obedient to said instructions, proceeded to the Red Lake Reservation and secured an inchoate agreement with the Red Lake Indians which was executed on March 12, 1902. This inchoate agreement, with suggested modifications, was, by defendants' then Secretary of the Interior, transmitted to Congress and was in changed and modified form included in and made a part of, the Indian appropriation bill approved March 3, 1903 (32 Stat. at L., 982 at 1009, 1010), with the following provision:

"This Act shall take effect and be in force from and after its ratification by the Red Lake and Pembina Bands of Chippewa Indians belonging on the Red Lake Indian Reservation, in the State of Minnesota, a majority of the male adults of said Indians assenting thereto, and the evidence thereof to be made by the proclamation of the President to the effect that this act has been duly ratified. And the Secretary of the Interior is hereby directed to submit this Act to said Indians for ratification as early as is practicable."

The Red Lake and Pembina bands of Chippewa Indians belonging on the Red Lake Reservation, rejected said provision contained in said Act of March 3, 1903. Thereafter, the Congress of the United States passed a bill which was approved by the President on February 20, 1904, and became a law of the United States, (33 Stat. at L., pp. 48-50), embodying said inchoate agreement of March 10, 1902, in

modified form, said Act being in words and figures as follows, to-wit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said agreement be, and the same is hereby, modified and amended so as to read as follows:

"Article I. The said Indians belonging on the Red Lake Indian Reservation, Minnesota, for the consideration hereinafter named, do hereby cede, surrender, grant, and con- [fol. 16] vey to the United States all their claim, right, title, and interest in and to all that part of the Red Lake Indian Reservation lying west of the range line between ranges thirty-eight and thirty-nine, west of the fifth principal meridian, the tract of land hereby ceded approximating two hundred and fifty-six thousand one hundred and fifty-two acres, and also hereby agree that all of said Indians now residing on the tract hereby ceded shall remove to the diminished reservation within six months after the ratification of this agreement, and shall be paid not exceeding twenty thousand dollars in cash by the Indians of said Red Lake Reservation out of the first payment received by them from the proceeds of this cession, said twenty thousand dollars, or so much thereof as may be necessary, to be paid equitably to those thus removing, in proportion to the value of their respective improvements, which payment by said Red Lake Indians shall be in full for all improvements which they will abandon, and also for the removal within the diminished reservation of their dead from where they now are buried on the tract hereby ceded.

Art. II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to sell, subject to the homestead laws of the United States, under rules and regulations to be prescribed by the Secretary of the Interior, in tracts not to exceed on- hundred and sixty acres to each individual, all of said lands, except lands remaining unsold after five years from the first sale hereunder, which may be sold without reference to the provisions of the homestead law. Said land shall be sold for not less than four dollars per acre, and shall be sold upon the following terms: One-fifth of the purchase price to be paid at the time of sale and the balance of the purchase price of said land to be paid

in five equal annual installments due in one, two, three, four, and five years from date of sale, respectively, and to pay over to said Indians all of the proceeds realized from the sale of the said lands as herein provided.

"Art. III. It is understood that of the amount realized from the sale of said lands a sum of not exceeding three hundred thousand dollars shall be paid in cash per capita, share and share alike, to each man, woman, and child belonging on said Red Lake Indian Reservation within ninety days after the first sale herein provided for, and the re-[fol. 17] mainder of the proceeds of the sale of said lands shall be paid in cash per capita in fifteen annual installments, the first of which fifteen annual installments is to be paid in the month of October of the year following that in which the payment of said three hundred thousand dollars is made, as provided in this agreement, and in the month of October of each year thereafter, and all moneys received after the expiration of said fifteen years shall be apportioned in like manner among said Indians and paid to them on the first day of October in each year.

"Art. IV. It is further agreed that the said Indians belonging on the said Red Lake Indian Reservation, Minnesota, shall possess their diminished reservation independent of all other bands of the Chippewa tribe of Indians and shall be entitled to allotments thereon of one hundred and sixty acres each, of either agricultural or pine land, the different classes of land to be apportioned as equitably as possible among the allottees.

"Art. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging on the Red Lake Indian Reservation, Minnesota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement. It is the intention of this agreement that the United States shall act as trustee for said Indians to dispose of said land and to expend and pay over the proceeds as received from the sale thereof only as received, as herein provided.

"Art. VI. This agreement shall take effect and be in force when accepted and ratified by the Congress of the United States.

"Sec. 2. That said agreement be, and the same is hereby, accepted and ratified as herein amended.

"Sec. 3. That the Secretary of the Interior is hereby authorized and directed to sell, subject to the homestead laws of the United States, under such rules and regulations as he may prescribe, in tracts not to exceed one hundred and sixty acres to each individual, all that part of the Red Lake Reservation, in the State of Minnesota, lying westerly of the range line between ranges thirty-eight and thirty-nine [fol. 18] west of the fifth principal meridian, approximating two hundred and fifty-six thousand acres. And the said land shall be sold for not less than four dollars per acre, and shall be sold upon the following terms: One-fifth of the price bid therefor to be paid at the time the bid is made, and the balance of the purchase price of said land to be paid in five equal annual installments, due in one, two, three, four, and five years from date of sale, respectively, payment to be made to the receiver of the United States land office for the district in which said land may be situated. And in case any purchaser fails to make such annual payments promptly when due, or within sixty days thereafter, all rights in and to the land covered by his or her purchase shall at once cease, and any payments made shall thereupon be forfeited and the Secretary of the Interior shall thereupon declare such forfeiture by reoffering said land for sale. And no patent shall issue to the purchaser until the purchaser shall have paid the purchase price and in all respects complied with the terms and provisions of the homestead laws of the United States: Provided, That such purchaser shall have the right of commutation as provided by section twenty-three hundred and one of the Revised Statutes of the United States, by paying for the land at the price for which it sold, receiving credit for payments previously made: Provided further, That such purchaser shall make his final proof comformable to the homestead laws within six years from the date of sale; that aliens who have declared their intention to become citizens of the United States may become purchasers under this Act, but before making final proof and acquiring title must take out their full naturalization papers; and that persons who may have heretofore exhausted their rights under the homestead law may become purchasers under this Act. Provided further, That after the first sale hereunder shall be closed,

the lands remaining unsold shall be subject to sale and entry at the price of four dollars per acre by qualified purchasers, subject to the same terms and conditions as herein prescribed as to lands sold at said first sale: Provided further, That all lands above described which shall remain unsold at the expiration of five years from the date of the first sale hereunder shall be offered for sale at not less than four dollars per acre (and lands remaining unsold after such sale shall be subject to private entry and sale at said price), without any conditions whatever except the [fol. 19] payment of the purchase price: And provided further, That whenever the boundary line of said reservation runs diagonally so as to divide any Government subdivision of a section, and the owner of that portion of such subdivision now being outside of the reservation becomes the purchaser of that portion of such subdivision lying within the reservation, residents and improvements upon either portion of such subdivision as provided by the homestead law shall constitute a compliance as to all such Government subdivisions.

"All of the Indians residing upon the tract above described shall remove therefrom to the diminished reservation within six months after the passage of this Act; and there is hereby appropriated from the proceeds of said sale the sum of twenty thousand dollars, or so much thereof as may be necessary, to be paid to those thus removing in proportion to their respective improvements, which payment to the said Red Lake Indians shall be in full for all improvements which they will abandon, and also for the expense of removal within the diminished reservation of their dead from where they are now buried on the tract above described, and the expense of making allotments.

"The proceeds of said lands as realized from time to time shall be paid into the United States Treasury to the credit of the Indians belonging on said reservation. Of the amount realized from the sale of said lands a sum not exceeding three hundred thousand dollars shall be paid in cash, per capita, share and share alike, to each man, woman, and child belonging on said Red Lake Indian Reservation within ninety days after the first sale herein provided for, and the remainder of the proceeds of the sale of said lands shall be paid in cash, per capita, in fifteen annual installments, the first installment to be paid in the month of October of the year following that in which the payment of the

three hundred thousand dollars is made; and all moneys received after the expiration of said fifteen years shall be apportioned in like manner among said Indians and paid to them on the first day of October in each year.

"The Secretary of the Interior is hereby vested with full power and authority to make such rules and regulations as to the time of notice, manner of sale, and other matters incident to the carrying out of the provisions of this Act as he may deem necessary, and with authority to [fol. 20] continue making sale of said lands until all of said lands shall have been sold.

"In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of the land is one dollar and twenty-five cents per acre.

"Sec. 4. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received as herein provided.

"Sec. 5. That this Act shall take effect and be in force from and after its passage.

Approved, February 20, 1904."

7. Plaintiffs aver that all of the lands described in said act of February 20, 1904, were the identical lands set aside by the Commissioners under the act of January 14, 1889, for the purposes set out in paragraph 3 of this petition and the lands ceded by said agreements and wrongfully withdrawn and reserved by said Executive Order. Plaintiffs aver that by said Act of February 20, 1904, the defendant, United States, wrongfully took said 666,434.64 acres of land from the corpus of the trust created by the agreements approved March 4, 1890, for the exclusive benefit of said designated class, plaintiffs herein, without compensation to plaintiffs therefor, and included the same in a new and wholly different trust created for a wholly different class of beneficiaries, thereby depriving said designated class, plaintiffs herein, of the beneficial interest therein secured to them under said agreements. Plaintiffs further aver that

defendant still holds said lands subject to said new trust created by said Act of 1904, save that it has sold and disposed of portions thereof, and of the timber thereon, realizing therefrom approximately $3,000,000, which proceeds have been held or disbursed solely for the benefit of the said beneficiaries of said new trust, there still remaining approximately 410,282.64 acres, a part of which contains valuable stands of timber.

[fol. 21] 8. Plaintiffs aver that of said 666,434.64 acres of land so wrongfully taken under said act of February 20, 1904, 107,677 acres were timber lands reasonably worth at the time said lands were so taken an average of thirty $30.00) dollars per acre, or a total of $3,230,310.00; that the remaining 447,877.64 acres, a considerable part of which fronted upon the lakes, were at the time said lands were taken of the reasonable average value of five ($5.00) dollars per acre, or a total of $2,239,388.20, and that as a result of said taking of said lands, plaintiffs were damaged in the sum of $5,469,698.20, together with interest thereon from February 20, 1904.

9. Plaintiffs aver that defendant, United States, through its officers and agents, unmindful of its duties and obligations under said agreements approved March 4, 1890, failed to make allotments to said Red Lake Indians "as soon as practicable after the completion of the census and ratification of said agreements," as therein provided, and did in further disregard of its contractual obligations thereunder, fail to make allotments to said Indians prior to February 20, 1904; that by said act of February 20, 1904, the defendant took said lands temporarily reserved on the Red Lake Reservation for the purposes averred in paragraph three of this petition from the corpus of the trust created by the agreements approved March 4, 1890, and thereby disabled itself as trustee from administering that portion of the trust estate so taken in conformity with the terms of said original trust. Plaintiffs aver that under said act of 1904, the defendant has ever since retained said lands as a closed reservation, has held the Red Lake Indians in an isolated, dependent tribal condition, refusing to make or to permit said Red Lake Indians to take allotments of land in severalty, all in violation of the terms of said original trust, and has solely by reason of said wrong-

ful acts expended large sums of money aggregating, to wit, approximately $800,000, out of the said trust funds of plaintiffs, for the construction, repair and maintenance of agency and other buildings on said closed reservation, in the construction of roads and buildings within said reservation, in the drainage of the lands within said reservation, for sawmills, steamboats, lumbering and logging operations on said reservation, and other purposes, none of which expenditures were authorized by said agreements [fol. 22] approved March 4, 1890, or conferred any benefits whatsoever upon plaintiffs, or would have been necessary had the defendant administered said portion of said trust estate according to the tenor of the agreements creating the trust, and all of which resulted directly from the wrongful acts of the defendant in diverting said lands from the corpus of the trust created by the original agreements and the subsequent maintenance of said reservation as a closed reservation. Plaintiffs aver that they are entitled to recover of and from the defendant, United States, the total amount of their trust funds so wrongfully withdrawn by the defendant and expended for the purposes aforesaid, which they say aggregated approximately $800,000, together with interest on the amounts withdrawn for the unlawful purposes herein averred, from the dates of the withdrawals, at the rate of five per cent per annum.

Wherefore plaintiffs pray judgment against defendant, United States, in the following amounts:

1. In the sum of $5,469,698.20, together with interest thereon at the rate of five per cent per annum from February 20, 1904, to date of payment.

2. In the sum of $800,000.00 and interest at the rate of five per cent per annum on the separate items totalling said amount from the date said items were respectively withdrawn from the trust fund of plaintiffs.

3. For such other, different or further relief as to the court may seem just and equitable.

4. For their costs and disbursements herein.

The Chippewa Indians of Minnesota, Plaintiffs, by Webster Ballinger and Baldwin, Baldwin, Holmes and Mayall, Their Attorneys.

Duly sworn to by Webster Ballunger and D. S. Holmes. Jurat omitted in printing.

II. General Traverse—Filed April 7, 1927

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Herman J. Galloway, Assistant Attorney General.

[fol. 23] III. Proceedings as to Intervening Petition

On September 10, 1928, Messrs. Dennis & Bell, attorneys, filed a motion to intervene on behalf of The Red Lake Bank of Chippewa Indians of Minnesota.

On October 24, 1928, the motion to intervene was argued and submitted.

Said motion to intervene was allowed by the court on October 24, 1928.

On October 24, 1928, the intervenors, The Red Lake Band of Chippewa Indians of Minnesota, filed its intervening petition, which is as follows:

IV. Petition in Intervention—Filed Oct. 24, 1928

To the Honorable, the Chief Justice and the Associate Judges of the Court of Claims:

The Red Lake Band of Chippewa Indians of Minnesota, the intervenors herein, for their petition in intervention, respectfully represent and show unto the court:

I

The intervenors enter this suit and file this petition under and by virtue of the authority contained in the Act of Congress approved May 18, 1928 (Public No. 442- 70th Congress), and the Act of Congress of May 14, 1926 (44 Stat. 555).

The Act of May 18, 1928, supra, provides:

"An Act to confer additional jurisdiction upon the Court of Claims under an Act entitled 'An Act authorizing the

Chippewa Indians of Minnesota to submit claims to the Court of Claims,' approved May 14, 1926.

Be it Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, that in case numbered H-76, heertofore filed in the Court of Claims under and in pursuance of an Act of Congress entitled 'An Act authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims,' approved May 14, 1926 (Forty-fourth Statutes at Large, page [fol. 24] 555) wherein the Chippewa Indians of Minnesota are parties plaintiff and the United States is party defendant, if the Court of Claims shall determine that the said Chippewa Indians are entitled to recover a judgment against the United States upon the cause of action therein set forth, the said court shall further determine whether such judgment, or any part thereof, shall be paid by the United States out of funds held by the United States in trust for the Red Lake Band of Chippewa Indians of Minnesota, and if the court shall so determine and said funds are found inadequate, then the unsatisfied portion of said judgment shall be paid by the United States, but in no event shall any part of the land of the Red Lake reservation be used in any way in payment thereof; and the said Red Lake Band of Chippewa Indians is hereby authorized, on the approval of this Act, to appear in said suit by their attorneys employed in accordance with the provisions of existing law, and defend their rights in the matter. Approved May 18, 1928."

The Act of May 14, 1926, supra, provides:

"Sec. 3. In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Chippewa Indians, and any payment or payments which may have been made by the United States upon any claim against the United States by said Indians shall not operate as an estoppel, but may be pleaded as an offset in such suit or suits as may gratuities, if any, paid to or expended for said Indians subsequent to January 14, 1889.

Sec. 5. If in any suit by all the Chippewas of Minnesota against the United States it appears to the court that any band or bands of said Indians are, or claim to be, the exclusive legal or equitable owners, or are entitled to, or claim,

a legal or equitable interest greater than an equal distributive share with all the Chippewa Indians of Minnesota, in the proceeds of any judgment or decree that may be entered or passed in settlement of any claims submitted hereunder, the court may permit, or of its own motion compel said band or bands to be made parties to any such suit, so that their rights may be fully and finally determined * * *."

[fol. 25]

II

The intervenors enter this suit and file this petition because of the provisions of law stated in paragraph I above, and because of the attitude of the United States with regard to the subject-matter of the suit as determined and announced in notice by the United States to the intervenors in the form of a letter from the Commissioner of Indian affairs to the Superintendent and Agent of the Red Lake Indian Reservation dated March 22, 1927, which, in part, follows:

"A suit filed in the Court of Claims on February 26, 1927, under the Jurisdictional Act of May 14, 1926, charges the United States as being responsible for misappropriation of the property of the Red Lake band amounting to about seven millions of dollars, and prays for recovery from the government for such amount. This amounts to a direct attack on the Red Lake Indians, and, if the court should sustain the charge, it would mean that they would suffer a loss to the extent of the amount recovered, as it would be charged to them in a final distribution of the Chippewa fund."

III

The Red Lake Band of Indians, now about 1,800 in number, is a part of the large Chippewa tribe that from the early history of the United States has lived in the vicinity of the Great Lakes. It is one of the Minnesota bands, and for two centuries has occupied the country around Upper and Lower Red Lake in Minnesota. With it has been merged a portion of the Pembina band, also Chippewa, many of whom formerly lived in the northeastern part of the present state of North Dakota. Prior to the treaty of October 2, 1863, between the United States and the Red Lake and Pembina bands, these Indians by right of

possession and occupancy owned exclusively the Indian title to more than twelve million acres of land in northwestern Minnesota and northeastern North Dakota, a part of which is the land mentioned in the plaintiff's petition herein. No other band or subdivision of the Chippewa Indians of Minnesota, the plaintiffs, owned or claimed any right, title or interest in said lands or any part thereof, nor did the United States recognize any claim or interest of any other Indians therein. In said treaty the Red Lake and Pembina [fol. 26] bands joined in ceding more than eight million acres of their lands to the United States and they alone received the consideration therefor (13 Stat. 667).

IV

1. Sometime prior to January 14, 1889, the United States became desirous of acquiring several million acres of lands from the Chippewa Indians of Minnesota, and also, of removing all of said Indians, except the Red Lake Band, to the White Earth Reservation; consequently the proper officials of the government opened, with the Indians, negotiations which led to the passage of the Act of Congress of January 14, 1889 (52 Stat. 642), providing for the appointment of three commissioners on whom was imposed the duty to negotiate with the different bands or tribes of Chippewa Indians in Minnesota for a cession and relinquishment in writing of all their title to all their reservations in Minnesota except the Red Lake and White Earth reservations, and to all and so much of these reservations as in the judgment of said commissioners was not required to make and fill allotments required by said act and existing acts, and shall not have been reserved by the commissioners for said purposes.

2. Commissioners were appointed as provided by the Act, and agreements were negotiated with said Indians by which 3,669,200 acres of land were ceded to the United States, of which 1,168 Red Lake Indians ceded 2,905,921 acres, and the 6,393 other Chippewa Indians of Minnesota ceded 763,279 acres.

3. The agreement made and entered into by and between the United States and the Red Lake Band, provided:

"We, the undersigned, being male adult Indians over eighteen years of age, of the tribes or bands or Chippewa

Indians occupying and belonging to the Red Lake Reservation, in the state of Minnesota, do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding the Act of Congress approved January 14, 1889, entitled 'An Act for the relief and civilization of the Chippewa Indians in the state of Minnesota' (Public No. 13), which said Act is embodied in the foregoing instrument, and after such explanation and understanding, have consented and agreed to said Act, and [fol. 27] have accepted and ratified the same, and do hereby accept and consent to and ratify the said Act, and each and all of the provisions thereof, and do hereby grant, cede, relinquish and convey to the United States all our right, title and interest in and to all and so much of said Red Lake Reservation as is not embraced in the following described boundaries, to-wit:

Commencing at the point on Thief River where the same crosses the line between Marshall and Polk counties, thence easterly to the most northwesterly point of the upper Red Lake, thence easterly along the northerly shore of said upper Red Lake to a point due north of a point one mile east from the easterly end of the lower Red Lake, thence due south to the last named point, thence southwesterly in a straight line to a point on Hay Creek, one mile from where said creek enters the lower Red Lake, thence south to a point from which a line extending west passes midway between what is called the 'big marsh' and the sugar bush north of and nearest to said marsh, said sugar bush being on the Red Lake and White Earth road; thence west along said line between said marsh and sugar bush to Clear Water River, said line being supposed to be about six miles south of the lower Red Lake; thence northwesterly along said Clear Water River to the point where said river crosses the boundary of Red Lake Reservation as the same has heretofore existed, thence along said reservation line to the place of beginning, as designated on a map published in 1888 by Rand, McNally & Co., of Chicago, Ill. (but all waterways within the reservation above described are to be free for commercial purposes to all citizens of the United States), for the purposes and upon the terms stated in said Act, which said lands embraced within the foregoing boundaries have been reserved by the commissioners appointed

under said Act and as therein authorized for the purpose of making and filling the allotments therein provided for.

Witness our hands and seals hereto subscribed and affixed at the Old Red Lake Agency, on the Red Lake Reservation, in the state of Minnesota, this 8th day of July, 1889.

Henry M. Rice (Seal), Joseph B. Whiting (Seal), Commission. B. P. Shuler, United States Indian Agent. W. C. Hubbell, Secretary to Commission."

Indian signatures follow:

[fol. 28] The agreement containing this unqualified, positive, definite and permanent reservation was approved by the President of the United States as provided by the Act on March 4, 1890; and the reservation became known as the "Diminished Red Lake Reservation."

4. The Red Lake Band, by this agreement, ceded only that part of their reservation not contained within the boundaries designated in the above description. The lands described were reserved to and for them and were not included in the cession, and neither the United States, nor the other Chippewa Indians of Minnesota, thereby acquired any right, title or interest in or to said lands. The Act provided for the allotment of the Red Lake Indians only on the Red Lake Reservation and for the allotment of all the other Chippewa Indians of Minnesota on the White Earth Reservation, or on the reservations where they respectively had lived.

5. The Red Lake Indians specifically deny that the Diminished Red Lake Reservation was "temporarily reserved" and that "there was an immediate cession of all the lands lying and situated within the Red Lake Reservation except sufficient lands to make allotments to the then Red Lake Indians," as alleged in paragraph 3 of plaintiffs' petition, and aver that there was not a cession of any part of said Diminished Red Lake Reservation; that the same remained the sole and exclusive property of the Red Lake Indians; and that it did not become a part of the corpus of a trust under the Act of January 14, 1889, as alleged in paragraph 4 of plaintiff's petition, all of which was well known to the plaintiffs.

6. The commissioners were authorized by the law to negotiate an agreement with the Indians as to the quan-

tity of land to be ceded to the United States; and the agreement, when consummated, provided for a cession of certain lands to the United States by the Red Lake Indians and reserved to them the Diminished Red Lake Reservation which was greater in area than was required at that time for allotment purposes; but this quantity was reserved by them because it was their land, and they, as a party, to the contract, demanded it; and because it was largely swamp land, unfit for agricultural purposes and allotment; [fol. 29] and further, because in the same agreement, they ceded nearly three million acres of their best lands to the United States, simultaneously agreeing to share the proceeds therefrom pro rata with over six thousand of their fellow tribesmen who had no right therein. To have reserved less for them would have made a contract already inequitable, and unfair, positively unconscionable and legally fraudulent.

7. The Red Lake Indians specifically deny that the United States disregarded its contractual obligations and plain duty in failing to permit or require the Red Lake Indians to take allotments in severalty, and that they held the Red Lake Band as tribal Indians, and said lands as a closed reservation, wrongfully, as alleged in paragraph 6 of plaintiff's petition; and they aver that said acts strictly were in accordance with the law and the express wishes and desires of said Indians. Moreover said acts were in compliance with the promises and agreements of the official representatives of the United States who negotiated and made said agreement with the Red Lake Indians. Said Indians were averse to entering into said agreement; and, in council proceedings, extending over a period of many days, when the same was under consideration, said officials, in order to induce said Indians to consent thereto, promised and represented to them that if they would execute said agreement, the Diminished Red Lake Reservation would be held for their sole and exclusive use and benefit and that they would not be required to take allotments in severalty until they so desired. Said Indians relied upon said promises and representations and were thereby induced to enter into said agreement. They always have been and now are strongly opposed to taking allotments in severalty; and their lands are of such character that allotment in severalty is not practicable.

V

Sometime prior to February 20, 1904, the United States became desirous of acquiring and opening for sale and settlement under the homestead laws, the western part of the Diminished Red Lake Reservation; consequently, the United States initiated negotiations with the Red Lake Indians with a view to securing a cession of said lands; and, as a result thereof, an agreement was effected which was [fol. 30] embodied in the Act of February 20, 1904 (33 Stat. 48), pursuant to which, the Red Lake Indians, for a valuable consideration, ceded to the United States that part of the Diminished Red Lake Reservation west of the range line between ranges thirty-eight and thirty-nine, west of the fifth principal meridian, approximately 256,152 acres. As a part of the consideration for the cession, it was agreed, and said Act so provided, that:

"Article IV. It is further agreed that the said Indians, belonging on said Red Lake Indian Reservation, Minnesota, shall possess their diminished reservation independent of all other bands of the Chippewa tribe of Indians and shall be entitled to allotments thereon of one hundred and sixty (160) acres each, of either agricultural or pine land, the different class of land to be apportioned as equitably as possible among the allottees.

Article V. It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging to the Red Lake Reservation, Minnesota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement. It is the intention of this agreement that the United States shall act as trustee for said Indians to dispose of said land and to expend and pay over the proceeds as received from the sale thereof only as received, as herein provided."

In this Act Congress expressly provided that the Red Lake Indians should own exclusively their "Diminished Reservations." The agreement on the part of the United States, contained in this Act, is supported by a cession of 256,152 acres of land to the United States by the Red Lake Indians as a consideration; consequently, they then and there purchased and paid for their exclusive ownership

of their "Diminished Reservation" if they did not already own it. The Act did not require the consent of the other Chippewa Indians of Minnesota to the cession or provide for their participation in the proceeds therefrom; and the Red Lake Indians specifically deny that the United States wrongfully took the lands embraced in said cession from the corpus of a trust created by the Act of January 14, 1889, and thereby deprived the plaintiffs of a beneficial interest therein as stated in paragraph 7 of their petition.

[fol. 31]

VI

The Red Lake Indians aver that the other Indians of Minnesota never owned any right, title or interest in or to the Diminished Red Lake Reservation, or any part thereof; and if they ever did, they relinquished and ceded it to the United States for a valuable consideration in the treaty of February 22, 1855 (10 Stat. 1155), which was made between the United States and said plaintiffs wherein certain reservations were set aside for said Chippewa Indians of Minnesota and certain cessions of lands were made to the United States, and which treaty contained a provision as follows:

"And the said Indians do further fully and entirely relinquish and convey to the United States, any and all right, title, and interest, of whatsoever nature the same may be, which they may now have in, and to any other lands in the Territory of Minnesota or elsewhere."

VII

On November 21, 1892, the President of the United States, by executive order, properly and lawfully withdrew and reserved from entry and sale as public lands fractional section 33, township 152 north, range 32 west, and fractional sections 4, 9, 16, 17, 19, 20 and 21, township 151 north, range 32 west, in Minnesota, containing 2,984.64 acres, and designated that the same be made a part of the Red Lake Indian Reservation for the benefit of the Indians thereof according to the terms of the agreement made with them by the United States through said commissioners under the provisions of said Act of January 14, 1889. In the negotiations between the Indians and the commissioners when said agreement was made, it was definitely and clearly

understood that all the land surrounding and bordering on the Red Lake should be excepted from the cession by said Indians to the United States, and should be reserved to them as a part of their reservation; but when the written instrument was prepared and executed it erroneously failed to except and exclude from the cession the lands covered by said executive order above described; consequently, said order was made to correct said description and reform said written instrument so that it would conform to the actual, express agreement and understanding [fol. 32] by and between the respective parties thereto. When said withdrawal was made and said lands thereby added to the Red Lake Reservation, it then contained all the lands surrounding and bordering on Lower Red Lake in accordance with said agreement and made effective the actual understanding of both parties thereto. The Red Lake Indians in truth and in fact never ceded the lands in said order described to the United States and the other Indians of Minnesota never acquired any legal or equitable interest or title therein, and have not sustained any damages as a result of said executive order.

VIII

The Red Lake Indians specifically deny that the United States has wrongfully, or in violation of any trust or agreement, expended the sum of $800,000.00 or any other sum, from the trust funds of the plaintiffs, on the Red Lake Reservation, or for the use and benefit of the Red Lake Indians as alleged in paragraph 9 of plaintiffs' petition. The Red Lake Indians aver that whatever sums of money have been used from the funds of the Chippewa Indians of Minnesota, have been expended for education, for the promotion of civilization and self-support among said Indians and for their benefit in accordance with the provisions of the Act of January 14, 1889, and subsequent acts of Congress; that the plaintiffs have had their full pro rata share of all funds so expended; and that, therefore, the plaintiffs have not been damaged in said sum or any other amount whatsoever.

IX

The Red Lake Indians aver that the United States, by and through the Congress, the president, the executive de-

partments, and its officials, in all its transactions with the Chippewa Indians of Minnesota, in laws, in treaties, in executive orders, in rules and regulations and official acts, always has recognized the sole and exclusive ownership of the Red Lake Indians to the Diminished Red Lake Reservation, and has never recognized any claim, right, title or interest of the other Chippewa Indians of Minnesota thereto; that the United States always has dealt separately with the Red Lake Indians and their property, and has never associated them with the other Chippewa Indians of Min- [fol. 33] nesota in any way except in the Act of January 14, 1889, and the transactions resulting therefrom. The Red Lake Indians further aver that Congress, in at least four acts, has recognized their exclusive ownership of the Diminished Red Lake Reservation.

The Red Lake Indians further aver that the plaintiffs in this suit are not entitled to any judgment because of any fault, misconduct, or wrongful or illegal act on their part; that if the plaintiffs are entitled to a judgment for any sum it is because of some mistaken policy, or wrongful or illegal act on the part of the United States, and should any judgment be rendered for the plaintiffs and against the United States in this suit, no part thereof can legally, equitable or justly be charged to the Red Lake Indians or paid with their funds held in trust for them by the United States.

X

The Red Lake Indians deny each and every averment in the plaintiffs' petition in this suit except as herein admitted, qualified or explained.

Wherefore, the Red Lake Band of Chippewa Indians, the intervenors, pray judgment:

1. That neither the United States nor the Chippewa Indians of Minnesota take anything against them in this suit.

2. That should a judgment be rendered for the plaintiffs and against the United States, the court further determine, adjudge and decree that such judgment, or no part thereof, shall be charged to the Red Lake Indians or paid by the United States out of funds held in trust for them.

3. For such other and further relief as may be deemed just and equitable.

4. For their costs and disbursements herein expended.

Red Lake Band of Chippewa Indians, Minnesota, Intervenors, by Dennis & Bell, Their Attorneys.

Duly sworn to by Robert C. Bell. Jurat omitted in printing.

V. Argument and Submission of Case

On October 14, 1934, this case was argued and submitted on merits by Mr. Webster Ballinger and Mr. Donald S. [fol. 34] Holmes, for plaintiff; by Mr. Walter C. Shoup and Mr. George T. Stormont, for defendant; and by Mr. Fred Dennis, for intervenors.

VI. History of Proceedings

On January 14, 1935, the court filed special findings of fact, conclusion of law and entered a judgment dismissing petition, with an opinion by Green, J.

On February 15, 1935, the plaintiff filed a motion for new trial.

On April 8, 1935, the court filed the following order and memorandum on said motion.

VII. Order of Court and Memorandum on Plaintiffs' Motion for New Trial—Filed April 8, 1935

Order

Now on this eighth day of April, 1935, the motion for new trial, to make additional findings, and change some of the findings heretofore made is submitted and overruled except as specified below:

It is hereby ordered that finding 19 be amended by adding thereto—

"The said table showed that the total number of male adults of all of the bands of the Chippewa Indians of Minnesota was 2,178, and that the total number assenting to the provisions with reference to the Red Lake Reservation was 1,884 of which 324 were members of the Red Lake and Pembina bands and 1,560 were members of other bands."

It is further ordered that the figure $484,543.20 in finding 37 be stricken out and in lieu thereof there be inserted $409,551.21.

MEMORANDUM ON MOTION FOR NEW TRIAL

Complaint is made in the motion for new trial that the court omitted to set out in full in the findings certain statutes, treaties, and agreements made in writing by the Gov- [fol. 35] ernment of the United States with the Indians. While matters of this kind for convenience have been set out in findings, this court and the Supreme Court take judicial notice thereof without their being so included.

Although the court does not consider it material to the case, on plaintiff's request the findings will be amended to show that without including any of the Red Lake or Pembina bands more than two-thirds of all of the Chippewa Indians of Minnesota consented to the provisions of the agreements made with reference to the Red Lake Reservation.

Plaintiffs also complain because the findings do not set out an itemized account which shows the nature of the expenditures referred to in findings 37 and 38. By oversight the total of the amount of expenditures specified in finding 37 was made $74,991.99 too large and this finding will be corrected accordingly. The court, however, did not decide that any item or items of expenditure made by the Government were proper offsets under the bill which gave this court jurisdiction of the case. At the present stage of the proceedings there is no occasion to list these items separately in the findings.

Other than specified above, the motion for new trial must be overruled.

VIII. Special findings of fact (filed January 14, 1935) as amended by the order of court of April 8, 1935, conclusion, of law and opinion of the court by Green, J.

Messrs. Webster Ballinger and Donald S. Holmes for plaintiffs. Baldwin, Holmes, Mayall, and Reavill were on the briefs.

Messrs. George T. Stormont and Walter C. Shoup, with whom was Mr. Assistant Attorney General Harry W. Blair, for defendant.

Mr. Fred Dennis for the intervenors.

This case having been heard by the Court of Claims, the court, upon the evidence adduced, makes the following

SPECIAL FINDINGS OF FACT

1. This case comes before this court under an act of Congress approved May 14, 1926, as amended by the act ap- [fol. 36] proved April 11, 1928, conferring jurisdiction upon this court to examine, adjudicate, and render judgment regardless of the statute of limitations in any and all equitable claims arising under the act of January 14, 1889, or any subsequent act of Congress in relation to Indian affairs which the Chippewa Indians of Minnesota may have against the United States, not previously determined by the Court of Claims or the Supreme Court. The act, among other things, provided that official letters, papers, documents, and records, or certified copies thereof, may be used in evidence and further that the court should also consider and adjudicate any claims that the United States may have against the Chippewa Indians, but that any payments made by the United States should not operate as an estoppel.

The act contains further provisions with reference to the amount of damages, if any, which might be awarded by the court, permitted bands of Chippewa Indians to be made parties thereto, and contains a number of other provisions not necessary to be considered in the determination of the principal issues in the case.

Under the provisions of the acts before mentioned, the plaintiffs, the Chippewa Indians of Minnesota, filed a petition in this case in this court on February 26, 1927, defendant a general traverse on April 7, 1927, and the Red

Lake Band of Chippewa Indians of Minnesota by permission of the court filed a petition of intervention on October 24, 1928. Congress by the acts of May 18, 1928, and June 28, 1932, made some additional provisions with reference to the judgment which might be rendered herein, the compensation of attorneys for the plaintiffs and other matters not necessary to be considered in determining the main issues of the case.

2. Plaintiffs, the Chippewa Indians of Minnesota, constitute the class designated and described in the act of January 14, 1889 (25 Stat. 642), and the agreements entered into pursuant thereto, as "all the Chippewa Indians of Minnesota."

3. The Chippewa (or Ojibway) was one of the largest tribes of Indians north of Mexico. Its range was formerly along both shores of Lakes Huron and Superior and extended across Minnesota into North Dakota. In the beginning of the 18th century the Chippewas succeeded in driving the Foxes, already reduced by a war with the [fol. 37] French, from North Wisconsin, compelling them to take refuge with the Sauk. They then turned against the Sioux, driving them across the Mississippi and south to Minnesota river, and continued their westward march across Minnesota and North Dakota until they occupied the headwaters of Red River, and established their westernmost band in the Turtle mountains. They had a large number of villages, bands, and local divisions scattered over a region extending 1,000 miles from east to west. Some of the bands bore the names of the village, lake, or river near which they resided. Of these there was a "band living about Red Lake and Red Lake r., N. Minn." and a "band living on Pembina r. in extreme N. Minnesota and the adjacent part of Manitoba." The various bands of Chippewa Indians were grouped under larger divisions or subtribes, which occupied certain fixed limits and were distinguished by marked differences.

Beginning in 1785 and thence onward, numerous treaties were made with the Chippewa Nation or with major or minor subdivisions thereof. As early as 1836 (7 Stat. 503), and since that year, many treaties were made in which either a separate band or a few separate bands of Chippewas were made parties. Among these were treaties

which granted reservations in the State of Minnesota to, or accepted cessions from, various bands which later became grouped under the name of "Chippewas of Minnesota", and for the cessions considerations in money, goods, and services were paid by the United States to, or for the benefit of, the band or bands with which the treaties were made.

Chippewa treaties since 1825 affecting lands in Minnesota are as follows:

With the Sioux and Chippewa and other tribes of Indians on August 19, 1825 (7 Stat. 272; 2 Kapp. 250).

With the Chippewa Nation on July 29, 1837 (7 Stat. 536; 2 Kapp. 491).

With the Chippewa Indians of the Mississippi and Lake Superior on October 4, 1842 (7 Stat. 591; 2 Kapp. 542).

With the Chippewa Indians of the Mississippi and Lake Superior on August 2, 1847 (9 Stat. 904; 2 Kapp. 567).

With the Pillager Band on August 21, 1847 (9 Stat. 908; 2 Kapp. 569).

[fol. 38] With the Chippewa Indians of Lake Superior and the Mississippi on September 30, 1854 (10 Stat. 1109; 2 Kapp. 648).

With the Mississippi, Pillager, and Lake Winnibigoshish Bands of Chippewa Indians on February 22, 1855 (10 Stat. 1165; 2 Kapp. 685).

With the Chippewas of the Mississippi and the Pillager and Lake Winnibigoshish Bands on March 11, 1863 (12 Stat. 1249; 2 Kapp. 839).

With the Red Lake and Pembina Bands on October 2, 1863 (13 Stat. 667; 2 Kapp. 853).

With the Red Lake and Pembina Bands on April 12, 1864 (13 Stat. 689; 2 Kapp. 861).

With the Chippewas of the Mississippi and the Pillager, and Lake Winnibigoshish Bands on May 7, 1864 (13 Stat. 693; 2 Kapp. 862).

With the Bois Forte Band on April 7, 1866 (14 Stat. 765; 2 Kapp. 916).

With the Chippewas of the Mississippi on March 19, 1867 (16 Stat. 719; 2 Kapp. 974).

4. On and long prior to the approval of the act of Congress of January 14, 1889 (25 Stat. 642), the Chippewas in Minnesota resided on twelve reservations, the total area of which was approximately 4,747,931 acres.

5. Eleven of the said reservations had been expressly described and set apart for the specific use of the band or bands occupying and belonging to the same, as shown by the treaties and Executive orders listed below:

Treaty of March 19, 1867, article I (16 Stat. 719), Leech Lake, Cass Lake, and Lake Winnibigoshish Reservations.

Treaty of March 19, 1867, article II (16 Stat. 719), White Earth Reservation.

Treaty of September 30, 1854, article II (10 Stat. 1109), Fond du Lac and Grand Portage Reservation.

Treaty of April 7, 1866, article III (14 Stat. 765), Bois Forte and Deer Creek Reservations.

Treaty of March 19, 1867, article I (16 Stat. 719), and Executive order October 29, 1873, White Oak Point Band (Kappler L. & T., 2nd Ed. vol. 1, p. 854).

Treaty of May 7, 1864, article XII (13 Stat. 693), Mille Lac Band.

[fol. 39] Treaty of February 22, 1855, article II (10 Stat. 1165), Gull Lake.

Act of May 29, 1872 (17 Stat. 165), Otter Tail Band of Pillagers.

Act of March 3, 1873 (17 Stat. 538), Pembina Band.

6. One of the twelve reservations mentioned in finding 4, supra, comprising approximately 3,200,000 acres, lying and situate around Upper and Lower Red Lakes in the northwestern part of Minnesota, was officially known as the Red Lake Reservation and was occupied and used exclusively by the Red Lake and Pembina Bands of Chippewas.

The said Red Lake Reservation prior to January 14, 1889, had never been expressly described in any single treaty or Executive order. Portions of its boundaries were from time to time fixed until the entire boundary was made definite by sundry treaties, Executive orders, acts of Congress, and departmental communications.

7. Under authority of an act of Congress approved June 19, 1860 (12 Stat. 44, 59), providing for negotiations with the Red Lake and Red River Chippewas in the State of Minnesota for the extinguishment of their title to lands in that State, a treaty with the Red Lake and Pembina Bands of Chippewa Indians was concluded on October 2, 1863, ratified with amendments on March 1, 1863, and proclaimed on May 6, 1864 (13 Stat. 667), as follows:

"Treaty Between the United States and the Red Lake and Pembina Bands of Chippewa Indians; Concluded in Minnesota, October 2, 1863; Ratified by the Senate with Amendments, March 1, 1864; Amendments Assented to April 12, 1864; Proclaimed by the President of the United States, May 5, 1864

"By the President of the United States of America

"A Proclamation

"To All and Singular to Whom These Presents Shall Come, Greeting:

"Whereas a treaty was made and concluded at the Old Crossing of Red Lake River, in the State of Minnesota, on the second day of October, in the year of our Lord one [fol. 40] thousand eight hundred and sixty-three, by and between Alexander Ramsey and Ashley C. Morrill, Commissioners, on the part of the United States, and the hereinafter named Chiefs, Headmen, and Warriors of the Red Lake and Pembina Bands of Chippewa Indians, on the part of said Bands, and duly authorized thereto by them, which treaty is in the words and figures following, to wit:

"Articles of a Treaty made and concluded at the Old Crossing of Red Lake River, in the State of Minnesota, on the second day of October, in the year eighteen hundred and sixty-three, between the United States of America, by their Commissioners, Alexander Ramsey and Ashley C. Morrill, agent for the Chippewa Indians, and the Red Lake and Pembina Bands of Chippewas, by their Chiefs, Headmen, and Warriors.

"Article I. The peace and friendship now existing between the United States and the Red Lake and Pembina bands of Chippewa Indians shall be perpetual.

"Article II. The said Red Lake and Pembina bands of Chippewa Indians do hereby cede, sell, and convey to the United States all their right, title, and interest in and to all the lands now owned and claimed by them in the State of Minnesota and in the Territory of Dakota within the following described boundaries, to wit: Beginning at the point where the international boundary between the United States and the British possessions intersects the shore of

the Lake of the Woods; thence in a direct line southwestwardly to the head of Thief River; thence down the main channel of said Thief River to its mouth on the Red Lake River; thence in a south-easterly direction, in a direct line towards the head of Wild Rice River, to the point where such line would intersect the northwestern boundary of a tract ceded to the United States by a treaty concluded at Washington on the twenty-second day of February, in the year eighteen hundred and fifty-five, with the Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa Indians; thence along the said boundary line of the said cession to the mouth of Wild Rice River; thence up the main channel of the Red River to the mouth of the Shayenne; thence up the main channel of the Shayenne River to Poplar Grove, thence in a direct line to the Place of Stumps, otherwise called Lake Chicot; thence in a direct [fol. 41] line to the head of the main branch of Salt River; thence in a direct line due north to the point where such line would intersect the international boundary aforesaid; thence eastwardly along said boundary to the place of beginning.

"Article III. In consideration of the foregoing cession, the United States agree to pay to the said Red Lake and Pembina bands of Chippewa Indians the following sums, to wit: Twenty thousand dollars per annum for twenty years; the said sum to be distributed among the Chippewa Indians of the said bands in equal amounts per capita, and for this purpose an accurate enumeration and enrollment of the members of the respective bands and families shall be made by the officers of the United States: Provided, That so much of this sum as the President of the United States shall direct, not exceeding five thousand dollars per year, may be reserved from the above sum, and applied to agriculture, education, the purchase of goods, powder, lead, &c., for their use, and to such other beneficial purposes, calculated to promote the prosperity and happiness of the said Chippewa Indians, as he may prescribe.

"Article IV. And in further consideration of the foregoing cession, and of their promise to abstain from such acts in future, the United States agree that the said Red Lake and Pembina bands of Chippewa Indians shall not be held liable to punishment for past offences. And in order to make compensation to the injured parties for the

depredations committed by the said Indians on the goods of certain British and American traders at the mouth of Red Lake River, and for exactions forcibly levied by them on the proprietors of the steamboat plying on the Red River, and to enable them to pay their just debts, the United States agree to appropriate the sum of one hundred thousand dollars; it being understood and agreed that the claims of individuals for damages or debt under this article shall be ascertained and audited, in consultation with the chiefs of said bands, by a commissioner or commissioners appointed by the President of the United States, and that after such damages and debts shall have been paid, the residue of the above sum shall be distributed among the chiefs. Furthermore, the sum of two thousand dollars shall be expended for powder, lead, twine, or such other beneficial purposes as the chiefs may request, to be [fol. 42] equitably distributed among the said bands at the first payment.

"Article V. To encourage and aid the chiefs of said bands in preserving order and inducing, by their example and advice, the members of their respective bands to adopt the habits and pursuits of civilized life, there shall be paid to each of the said chiefs annually, out of the annuities of the said bands, a sum not exceeding one hundred and fifty dollars, to be determined by their agents according to their respective merits. And for the better promotion of the above objects, a further sum of five hundred dollars shall be paid at the first payment to each of the said chiefs to enable him to build for himself a house. Also, the sum of five thousand dollars shall be appropriated by the United States for cutting out a road from Leech Lake to Red Lake.

"Article VI. The President shall appoint a board of visitors, to consist of not less than two nor more than three persons, to be selected from such Christian denominations as he may designate, whose duty it shall be to attend at all annuity payments of the said Chippewa Indians, to inspect their fields and other improvements, and to report annually thereon on or before the first day of November, and also as to the qualifications and moral deportment of all persons residing upon the reservation under the authority of law; and they shall receive for their services five

dollars a day for the time actually employed, and ten cents per mile for travelling expenses: Provided, That no one shall be paid in any one year for more than twenty days' service, or for more than three hundred miles' travel.

"Article VII. The laws of the United States now in force, or that may hereafter be enacted, prohibiting the introduction and sale of spirituous liquors in the Indian country, shall be in full force and effect throughout the country hereby ceded, until otherwise directed by congress or the President of the United States.

"Article VIII. In further consideration of the foregoing cession, it is hereby agreed that the United States shall grant to each male adult half-breed or mixed-blood who is related by blood to the said Chippewas of the said Red Lake or Pembina bands who has adopted the habits and customs of civilized life, and who is a citizen of the United [fol. 43] States, a homestead of one hundred and sixty acres of land, to be selected at his option, within the limits of the tract of country hereby ceded to the United States, on any land not previously occupied by actual settlers or covered by prior grants, the boundaries thereof to be adjusted in conformity with the lines of the official surveys when the same shall be made, and with the laws and regulations of the United States affecting the location and entry of the same.

"Article IX. Upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation of (640) six hundred and forty acres near the mouth of Thief River for the chief 'Moose Dung' and a like reservation of (640) six hundred and forty acres for the chief 'Red Bear' on the north side of Pembina River.

"In witness whereof, the said Alexander Ramsey and Ashley C. Morrill, commissioners on the part of the United States, and the chiefs, headmen, and warriors of the Red Lake and Pembina bands of Chippewa Indians, have hereunto set their hands, at the Old Crossing of Red Lake River, in the State of Minnesota, this second day of October, in the year of our Lord one thousand eight hundred and sixty-three.

"Alex. Ramsey, Ashley C. Morrill, Commissioners.

"Mons-O-Mo (his x mark), Moose Dung, Chief of Red Lake; Kaw-Wash-Ke-Ne-Kay (his x mark), Crooked Arm, Chief of Red Lakes; Ase-E-Ne-Wub (his x mark), Little Rock, Chief of Red Lak(e); Mis-Co-Muk-Quoh (his x mark), Red Bear, Chief of Pembina; Ase-Anse (his x mark), Little Shell, Chief of Pembina; Mis-Co-Co-Noy-A (his x mark), Red Rob, Warrior of Red Lake; Ka-Che-un-Ish-E-Naw-Bay (his x mark), The Big Indian, Warrior of Red Lake; Neo-Ki-Zhick (his x mark), Four Skies, Warrior of Red Lake; Nebene-Quin-Gwa-Hawegaw (his x mark), Summer Wolverine, Warrior of Pembina; Joseph Gornon (his x mark), Warrior of Pembina; Joseph Montreuil (his x mark), Warrior of Pembina; Teb-Ish-Ke-Ke-Shig (his x mark), Warrior of Pembina; May-Zhue-E-Yaush (his x mark), Drop-[fol. 44] ping Wind, Head Warrior of Red Lake; Min-Du-Wah-Wing (his x mark), Berry Hunter, Warrior of Red Lake; Naw-Gaun-E-Gwan-Abe (his x mark), Leading Feather, Chief of Red Lake.

"Signed in the presence of——

"Paul H. Beaulieu, Special Interpreter; Peter Roy, Special Interpreter; T. A. Warren, U. S. Interpreter; J. A. Wheelock, Secretary; Reuben Ottman, Secretary; George A. Camp, Major 8th Regiment Min. Vol.; William T. Rockford, Capt. Co. K, 8th Regiment Min. Vol.; P. B. Davy, Capt. Co. L, 1st Regt. Min. M. Rangers; G. M. Dwelle, 2d Lieut. 3d Minn. Battery; F. Rieger, Surgeon 8th Regt. M. Vols.; L. S. Kidder, 1st Lieut. Co. L, 1st M. M. Rangers; Sam B. Abbe; C. A. Kuffer; Pierre x Bottineau.

"And whereas the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the first day of March, one thousand eight hundred and sixty-four, advise and consent to the ratification of the same by a resolution with amendments in the words and figures following, to wit:

"In Executive Session Senate of the United States, March 1, 1864

"Resolved, (two-thirds of the Senators present concurring,) That the Senate advise and consent to the ratification of the Articles of a Treaty made and concluded at the Old Crossing of Red Lake River in the State of Minnesota, on the second day of October, in the year eighteen hundred and sixty-three, between the United States of America, by their commissioners, Alexander Ramsey and Ashley C. Morrill, agent for the Chippewa Indians, and the Red Lake and Pembina Bands of Chippewas, by their chiefs, headmen, and warriors,' with the following

"Amendments:

"In article 4, strike out in lines 19, 20, and 21, the following words: 'and that after such damages and debts shall have been paid, the residue of the above sum shall be distributed among the chiefs.'

[fol. 45] "At the end of article 4, insert the following:

"Provided, That no part ~~of~~ the sum of one hundred thousand dollars shall be appropriated or paid to make compensation for damages or for the payment of any debts owing from said Indians until the said commissioner or commissioners shall report each case, with the proofs thereon, to the Secretary of the Interior, to be submitted to Congress, with his opinion thereon, for its action; and that, after such damages and debts shall have been paid, the residue of said sum shall be added to the annuity funds of said Indians, to be divided equally upon said annuities.

"At the end of Article 8, insert the following:

"Provided, That no scrip shall be issued under the provisions of this article, and no assignments shall be made of any right, title, or interest at law or in equity until a patent shall issue, and no patent shall be issued until due proof of five years' actual residence and cultivation, as required by the act entitled 'An Act to secure homesteads on the public domain.'

"Attest:

"J. W. Forney, Secretary.

"And whereas the foregoing amendments having been fully interpreted and explained to May-dwa-gua-no-nind, Mons-o-mo, Ase-e-ne-wub, Mis-co-muk-quah, Naw-gon-e-gwo-nabe, Que-we-zance, May-zha-ke-osh, Bwa-ness, Wa-bon-e-qua-osh, Te-bish-co-ge-shick, Te-besh-co-be-ness, Osh-shay-o-sick, Sa-sa-goh-cum-ick-ish-cum, Kay-tush-ke-wub-e-tung, I-inge-e-gaun-abe, and Que-we-zance-ish, chiefs, headmen, and warriors of the Red Lake and Pembina Bands of Chippewa Indians, they did, in articles supplementary to this treaty, concluded at the city of Washington, District of Columbia, on the twelfth day of April, one thousand eight hundred and sixty-four, (which articles supplementary have been duly consented to and ratified, and were proclaimed on the twenty-fifth day of April, one thousand eight hundred and sixty-four,) agree and assent to the provisions of this treaty, in an article of the following tenor:

"Article I. The said Red Lake and Pembina bands of Chippewa Indians do hereby agree and assent to the pro-[fol. 46] visions of the said treaty, concluded at the Old Crossing of Red Lake River, as amended by the Senate of the United States by resolution bearing date the first day of March, in the year eighteen hundred and sixty-four.

"Now, therefore, be it known that I, Abraham Lincoln, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the first of March, one thousand eight hundred and sixty-four, accept, ratify, and confirm the said treaty and amendments thereto.

"In testimony whereof, I have signed the same with my hand, and have caused the seal of the United States to be hereto affixed.

"Done at the city of Washington, this fifth day of May, in the year of our Lord one thousand eight hun-
(L. S.) dred and sixty-four, and of the Independence of the United States the eighty-eighth.

"Abraham Lincoln.

"By the President:

"William H. Seward, Secretary of State."

A treaty, supplementary to the foregoing treaty of October 2, 1863, with the Red Lake and Pembina bands of Chippewa Indians was concluded on April 12, 1864, ratified on

April 21, 1864, and proclaimed on April 25, 1864 (13 Stat. 689). The said treaty, in substance, is as follows:

(Art. I). The Red Lake and Pembina bands of Chippewa Indians assent to the provisions of the treaty of October 2, 1863, as amended by the Senate on March 1, 1864.

(Art. II). The United States, in lieu of the annuities provided for in Art. III of the said treaty of 1863, agrees to pay annually, during the pleasure of the President, certain sums of money to be paid to the Indians in equal per capita shares; and provides for a census of each of said bands of Indians.

(Art. III). The United States also agrees to expend annually for fifteen years certain sums for the purchase of useful articles for the use of said Indians.

(Art. IV). The United States agrees to furnish said bands of Indians for fifteen years a physician and certain [fol. 47] skilled workmen, and supplies for blacksmithing and carpentering purposes.

(Art. V). The United States agrees to furnish said Indians a sawmill and a run of millstones.

(Art. VI). Article IV of the aforesaid treaty of 1863, as amended, is again amended and provides for the payments of money to or for the chiefs, for the uses of the members of said bands, and for the payment of claims against said Indians.

(Art. VII). Article VIII of the aforesaid treaty of 1863, as amended, is again amended to provide for the issuance of land scrip to mixed-bloods in certain cases.

8. (1) In article II of the foregoing treaty of October 2, 1863, mention is made of the treaty of February 22, 1855, with the Mississippi, Pillager, and Lake Winnibigoshish Bands of Chippewa Indians (10 Stat. 1165). Article I of the latter treaty is as follows:

"The Mississippi, Pillager, and Lake Winnibigoshish Bands of Chippewa Indians hereby cede, sell, and convey to the United States all their right, title, and interest in and to the lands now owned and claimed by them in the Territory of Minnesota, and included within the following boundaries, viz: Beginning at a point where the east

branch of Snake River crosses the southern boundary line of the Chippewa country, east of the Mississippi River, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven, running thence up the said branch to its source; thence, nearly north in a straight line, to the mouth of East Savannah River; thence, up the St. Louis River, to the mouth of East Swan River; thence, up said river to its source; thence, in a straight line, to the most westwardly bend of Vermillion River; thence, northwestwardly in a straight line, to the first and most considerable bend in the Big Fork River; thence, down said river to its mouth; thence, down Rainy Lake River, to the mouth of Black River; thence, up that river to its source; thence, in a straight line, to the northern extremity of Turtle Lake; thence, in a straight line, to the mouth of Wild Rice River; thence, up Red River of the North, to the mouth of Buffalo River; thence, in a straight line, to the southwestern extremity of Otter Tail Lake; [fol. 48] thence, through said lake, to the source of Leaf River; thence down said river, to its junction with Crow Wing River; thence down Crow Wing River, to its junction with the Mississippi River; thence to the commencement on said river of the southern boundary line of the Chippewa country, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven; and thence, along said line, to the place of beginning. And the said Indians do further fully and entirely relinquish and convey to the United States, any and all right, title, and interest, of whatsoever nature the same may be, which they may now have in, and to any other lands in the Territory of Minnesota, or elsewhere."

The treaty also provides, in part, that certain delimited tracts of land are excepted from the area ceded by article I and reserved and set apart for the permanent homes of the said Indians; and that the President may assign not more than 80 acres thereof for the use of individual Indians. The treaty also provides, in consideration of and compensation for the cession made in article I, that certain sums of money shall be expended by the United States for the use and benefit solely of the said bands of Chippewa Indians.

The following portion of the line delimiting the cession made in article I, viz, "(from the mouth of Black River);

thence, up that river, to its source; thence in a straight line, to the northern extremity of Turtle Lake; thence in a straight line, to the mouth of Wild Rice River;" delimited the eastern and southern boundaries of the unceded area known as Red Lake Reservation in Minnesota.

(2) By the treaty of May 7, 1864, with the Chippewas of the Mississippi, and Pillager and Lake Winnibigoshish bands of Chippewa Indians in Minnesota (13 Stat. 693), the said Indians ceded certain lands to the United States, and in consideration thereof (in addition to other valuable considerations), the United States agreed to set apart for the Chippewas of the Mississippi certain lands, the out-boundary line of which is described, in part (Id. p. 694), as "(from the headwaters of Rice River), thence northwesterly along the line of the Red Lake Reservation to the mouth of Thief River (etc.)."

(3) On January 23, 1872, the Secretary of the Interior transmitted to the House of Representatives an estimate [fol. 49] of appropriation required for surveying Indian reserves under treaty stipulations, as follows:

For surveying Indian reserves under treaty stipulations	$55,000

Explanation of the foregoing estimate,

. . . . . .

For the survey of the Red Lake and Pembina and the Chippewa of the Mississippi Reservations in Minnesota set apart under the treaty of October 2, 1863, and treaty of March 19, 1867 (Stat. at Large, vol. 13, p. 667, and vol. 16, p. 719), or so much thereof as may be necessary	5,000

On May 29, 1872, Congress appropriated for survey of Indian reserves under treaty stipulations Fifty-five Thousand Dollars (17 Stat. 186).

The out-boundaries of the Red Lake Reservation were subsequently surveyed.

(4) By Executive order of March 18, 1879, the President withdrew from sale and settlement and set apart as a

reservation for Indian purposes a tract of land delimited, in part, as follows:

"(From the northwest corner of Tp. 149 N., R. 42 W.); thence east on the line between township 149 north, and township 150 north, to the intersection of said line with the southwestern boundary of the Red Lake Indian Reservation; thence southeasterly to the most southerly point of the Red Lake Indian Reservation; thence in a northeasterly direction and along the line of the Red Lake Indian Reservation to a point due north from the northeast corner of the White Earth Indian Reservation; etc."

(5) On January 25, 1886, the President sent a message to Congress transmitting a communication from the Secretary of the Interior, relative to legislation for the Chippewa Indians in Minnesota. The Secretary appended a report from the Commissioner of Indian Affairs which reads, in part, as follows:

"While it may not be desirable to remove any of the Red Lake and Pembina Chippewas from the Red Lake Reserve, [fol. 50] I think it very desirable to include them in the negotiations (with the other bands of Chippewas).

"They own and occupy an immense area of country north of White Earth, which has never been ceded to the United States; the Indians still retaining all their original rights in the soil. The reservation is estimated to contain about 3,200,000 acres or 5,000 square miles. • • •

"The Red Lake and Pembina Bands occupying this reservation have much more land than they need, or can possibly make use of, and it is understood they are willing to sell a portion of it."

(6) In a communication dated February 11, 1887, from the Commissioner of Indian Affairs to the Secretary of the Interior the Commissioner said:

"It should be premised that the Red Lake Reservation has never been ceded to the United States.

"By the treaty of October 2, 1863 (13 Stats. 667), the Red Lake and Pembina Bands of Chippewa Indians ceded to the United States all the lands claimed and owned by them in Minnesota and Dakota within certain described boundaries.

"This cession determined the boundaries of the Red Lake Reservation on the west and south.

"The east boundary had previously been established by the treaty of February 22, 1885 (1855) (10 Stats. 1165). By this last treaty the Mississippi Chippewas ceded to the United States a large tract of country in Minnesota extending north and east to the country claimed by the Red Lake and Pembina Bands.

"The land lying between and north of the boundaries of these two cessions was thus recognized as the country of the Red Lake and Pembina Bands, to which these Indians have all the original rights of Indian occupancy attaching to unceded Indian lands."

(7) On January 3, 1889, the President requested certain information from the Secretary of the Interior, who in turn transmitted the request to the Commissioner of Indian Affairs. The Commissioner thereupon reported in part:

"There are about 7,500 Chippewa Indians in the State of Minnesota, including those not residing upon any reservation, of which number 1,131 belong to the Red Lake [fol. 51] Reservation, and none of the Indians in that State, except the Red Lake Indians, have any right, title, or interest in the Red Lake Reservation. • • •."

(8) The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on May 24, 1889, issued instructions to the Commissioners appointed under the provisions of the act of January 14, 1889.

Included in said instructions is the following:

"It has not heretofore been claimed by anyone, and so far as the knowledge of this office extends, and certainly not by the Indians themselves, that the Red Lake Reservation is the common property of all the Chippewa Indians in Minnesota. None but the Red Lake and Pembina Bands have ever claimed an interest in said reservation, and said bands have always been recognized and regarded as the sole owners by right of original Indian occupancy, the lands having never been ceded to the United States."

9. The Indian Appropriation Act of May 15, 1886 (24 Stat. 29, 44), contained the following provision:

"To enable the Secretary of the Interior to negotiate with the several tribes and bands of Chippewa Indians in the State of Minnesota for such modification of existing

treaties with said Indians and such change of their reservation as may be deemed desirable by said Indians and the Secretary of the Interior, and as to what sum shall be a just and equitable liquidation of all claims which any of said tribes now have upon the Government."

Under the authority contained in said act the Secretary of the Interior secured two inchoate agreements and transmitted them to the Congress for ratification or rejection. The first of these agreements was made with the Chippewas of White Earth, Leech Lake, Cass Lake, Lake Winnibigoshish, and White Oak Point Reservations, and the Gull Lake and Gull River Bands, and provided for the consolidation of the Indians, parties thereto, upon the White Earth Reservation; for allotments in severalty thereon; and for the sale of the surrendered reservations of the said tribes and bands for the benefit of the said Indians.

The second of the aforesaid inchoate agreements was made with the Red Lake Chippewas of the Red Lake Reser- [fol. 52] vation, and provided for the cession of about two-thirds of their reservation, or about 2,000,000 acres, to the United States, to be held in trust and sold for the benefit of the Red Lake Chippewas. The agreement also delimited a diminished reservation of about 1,000,000 acres for the Red Lake Chippewas; provided for allotments in severalty to them thereon at the discretion of the President and with their consent; and that the overplus of lands after allotments be held for the sole use and benefit of the Red Lake Chippewas.

The said two agreements were considered by the Committee on Indian Affairs of the House of Representatives, who reported to the House, recommending their disapproval; and introducing and recommending the passage of a bill known as H. R. 7935. Said report reads, in part, as follows:

"To understand the subject matter of said bill and agreements fully it is necessary to describe in detail the several reservations and Indian lands affected by these measures.

"All the Indians in Minnesota are members of the Great Chippewa family, which has for generations occupied the northern and northeastern half of the State. There are now in all about 7,500 of these Indians, who occupy reservations and unceded lands amounting in the aggregate to about 4,700,000 acres of land.

"The following table shows in detail the name of each Indian reservation, the acreage thereof, and the number of Indians occupying the same, viz:

Name of reservation	Acreage	Population
Red Lake	3,200,000	1,103
White Earth	796,672	1,845
White Oak Point, Cass Lake, and Winnibigoshish	320,000	974
Leech Lake	94,000	1,174
Mille Lac	61,014	942
Fond du Lac	100,121	455
Boise Fort	107,509	702
Grand Portage	51,840	301
Total	4,731,596	7,496

"The so-called 'Red Lake Reservation' is simply a remnant of unceded Indian Territory occupied at present by the Red Lake Band, but really the common property, so far as the Indian title is concerned, of all the Chippewa Indians in Minnesota. The Mille Lac Reservation has long [fol. 53] since been ceded by the Indians, in fee, to the United States, with a right reserved to the Indians to occupy the same as long as they are well behaved. The other reservations are treaty reservations.

"The White Earth Reservation is 36 miles square, and embraces prairie and timber lands of the best and most valuable character for agricultural purposes in northern Minnesota. For agricultural purposes it is the choice of all the reservations.

"The Red Lake Reservation consists largely of prairie lands, of which some are low and wet, together with some bodies of timber around Red Lake and on the Northern or Boiny Lake River slope of the reserve. The timber lands are part pine and part hardwood and other mixed varieties.

"The other reservations are not well adapted to agricultural purposes, and are composed mostly of bodies of woodland, interspersed with marshes and swamps. The woodlands are part pine and part hardwood and other varieties of timber. As a rule the pine lands on these reservations are unfit for agricultural purposes, and are valuable chiefly for the pine thereon.

. . . . . .

"The Red Lake agreement is also open to serious objection in perpetuating forever the tribal evolution of those 1,100 Red Lake Indians, by giving them in perpetuity a tribal fee title to a cool million acres of agricultural lands,

less the individual allotments, which could not well exceed 160,000 acres of land. This seems the height of prodigality, to first give each of these Indians a farm and then give the whole band—only 1,100 of them—over 800,000 acres in common in fee forever.

"It is now conceded on all hands that the only safe and practical way to civilize the Indians is by allotting lands in severalty to them—breaking up their tribal relations and ownership in common, and putting them to work as individuals on their several allotments. Not only does the Red Lake agreement do violence to these views, but it seems particularly calculated to build up an Indian land monopoly and oligarchy, more than that which now exists among some of the so-called civilized tribes in Indian Territory.

"The same objection exists as to the White Earth Agreement; but as the overplus of land after filling allotments [fol. 54] is not apt to be much over 200,000 acres of land, the objection is not as serious and far reaching in its consequences.

"Your committee are also opposed to the Red Lake bill above mentioned, for the reasons—

"(1) That it is only a partial dealing with the Indian problem in Minnesota. It makes provision for only 1,100 Indians, while the residue, over 6,000 in all, are unprovided for.

"(2) While all the Chippewa in Minnesota really belong to one family, and this Red Lake Reservation is really a remnant of all that country once occupied by them in common, and thus a sort of common property, yet the bill proposes to give the 1,100 Red Lake Indians the entire proceeds of the 3,200,000-acre reservation, less what may be required to fill allotments, while the other 6,000 Indians are to be limited to about 1,500,000 acres, less allotments; or to put it more concisely, 1,100 Indians are to receive the exclusive benefit of 3,200,000 acres, while 6,000 Indians receive the benefit of only 1,500,000 acres. Your Committee think this method of apportionment is unfair and unwise in every view.

"All the Indians on the small outlying and scattered reservations should be removed to and colonized upon the White Earth Reservation, where allotments should be

made to all of them, except the Red Lake band; and the Red Lake band should have their allotments on the Red Lake Reservation; and after ample allotments have been made to all the Indians as aforesaid the rest of the lands should be surveyed and classified into pine and agricultural lands. The pine lands, after being properly appraised, should be sold at public sale to the highest bidder, but at not less than the appraised price. The agricultural lands should inure to all the Chippewa Indians in Minnesota in the homestead laws.

"The proceeds of the lands thus disposed of should form a permanent interest-bearing fund for all the Chippewa Indians in common, the income and principal of which should inure to all the Chippewa Indians in Minnesota in common.

"To carry out these general views your Committee have prepared and introduced the accompanying bill (H. R. 7935), entitled 'A bill for the relief and civilization of the [fol. 55] Chippewa Indians in Minnesota', and recommend the passage of the same.

"The bill is in the nature of a proposal to the Indians, and if not accepted by them is inoperative, and nugatory. If accepted and assented to by at least two-thirds of the male adults of each band, the bill, if passed, becomes effective. In brief, the bill, if accepted by the Indians, aims to break up their tribal relations and make them full citizens, to allot ample land to each of them in severalty, to dispose of the residue of the lands—the pine lands for the highest possible figure, the agricultural lands at $1 per acre to actual settlers under the homestead laws—and to give all the Indians the entire benefit of the proceeds of the lands, less the necessary expenses attending their survey, appraisal, and disposal. As to details the bill speaks for itself, and is believed by your Committee, fully and fairly, is a just and practical measure, to carry out the design of the general plan outlined as hereinbefore described."

The said agreements were never ratified by Congress, and the said bill introduced by the Committee, after several amendments, became the act of January 14, 1889.

10. The act of January 14, 1889 (25 Stat. 642), entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota" is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and directed, within sixty days after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated: and [fol. 56] such cession and relinquishment shall be deemed sufficient as to each of said several reservations, except as to the Red Lake Reservation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; and provided that all agreements therefor shall be approved by the President of the United States before taking effect: Provided further, That in any case where an allotment in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deprived thereof or disturbed therein except by his own individual consent separately and previously given, in such form and manner as may be prescribed by the Secretary of the Interior. And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, and for the purpose of making the allotments and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and before completing the same, make an accurate census of each tribe or band, classifying them into male and female

adults, and male or female minors; and the minors into those who are orphans and those who are not orphans, giving the exact numbers of each class, and making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior, and the other with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States shall be deemed full and ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided.

"Sec. 2. That the said commissioners shall, before entering upon the discharge of their duties, each give a bond to the United States in the sum of ten thousand dollars, with sufficient sureties, to be approved by the Secretary of the Interior, and conditioned for the faithful discharge of [fol. 57] their duties under this act, and they shall also each take an oath to support the Constitution of the United States, and to faithfully discharge the duties of their office, which bonds and oaths shall be filed with the Secretary of the Interior. Said commissioners shall be entitled to a compensation of ten dollars per day for each day actually employed in the discharge of their duties, and for their actual traveling expenses and board, not exceeding three dollars per day. Said commissioners shall also be authorized to employ a competent interpreter while engaged in the performance of their duties, at a compensation and allowance to be fixed by them, not in excess of that allowed to each of them under this act.

"Sec. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth,

eighteen hundred and eighty-seven, entitled 'An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes'; and all allotments heretofore made to any of said Indians on the White Earth Reservation are hereby ratified and confirmed with the like tenure and condition prescribed for all allotments under this act: Provided, however, That the amount heretofore allotted to any Indian on White Earth Reservation shall be deducted from the amount of allotment to which he or she is entitled under this act: Provided further, That any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

[fol. 58] "Sec. 4. That as soon as the cession and relinquishment of said Indian title has been obtained and approved as aforesaid, it shall be the duty of the Commissioners of the General Land Office to cause the lands so ceded to the United States to be surveyed in the manner provided by law for the survey of public lands, and as soon as practicable after such survey has been made, and the report, field-notes, and plats thereof filed in the General Land Office, and duly approved by the Commissioner thereof, the said Secretary of the Interior, upon notice of the completion of such surveys, shall appoint a sufficient number of competent and experienced examiners, in order that the work may be done within a reasonable time, who shall go upon said lands thus surveyed and personally make a careful, complete, and thorough examination of the same by forty-acre lots, for the purpose of ascertaining on which lots or tracts there is standing or growing pine timber, which tracts on which pine timber is standing or growing for the purposes of this act shall be termed 'pine lands,' the minutes of such examination to be at the time entered in books provided for that purpose, showing with particularity the amount and quality of all pine timber standing or growing on any lot or tract, the amount of such pine timber to be estimated by feet in the manner usual in estimating such timber, which estimates and re-

ports of all such examinations shall be filed with the Commissioner of the General Land Office as a part of the permanent records thereof, and thereupon that officer shall cause to be made a list of all such pine lands, describing each forty-acre lot or tract thereof separately, and opposite each such description he shall place the actual cash value of the same, according to his best judgment and information, but such valuation shall not be at a rate of less than three dollars per thousand feet, board measure, of the pine timber thereon, and thereupon such lists of lands so appraised shall be transmitted to the Secretary of the Interior for approval, modification, or rejection, as he may deem proper. If the appraisals are rejected as a whole then the Secretary of the Interior shall substitute a new appraisal and the same or original list as approved or modified shall be filed with the Commissioner of the General Land Office as the appraisal of said lands, and as constituting the minimum price for which said lands may be sold, as hereinafter provided, but in no event shall said pine [fol. 59] lands be appraised at a rate of less than three dollars per thousand feet board measure of the pine timber thereon. Duplicate lists of said lands as appraised, together with copies of the field-notes, surveys, and minutes of examinations shall be filed and kept in the office of the register of the land office of the district within which said lands may be situated, and copies of said lists with the appraisals shall be furnished to any person desiring the same upon application to the Commissioner of the General Land Office or to the register of said local land office.

"The compensation of the examiners so provided for in this section shall be fixed by the Secretary of the Interior, but in no event shall exceed the sum of six dollars per day for each person so employed, including all expenses.

"All other lands acquired from the said Indians on said reservations other than pine lands are for the purposes of this act termed 'agricultural lands.'

"Sec. 5. That after the survey, examination, and appraisals of said pine lands has been fully completed they shall be proclaimed as in market and offered for sale in the following manner: The Commissioner of the General Land Office shall cause notices to be inserted once in each week of four successive weeks in one newspaper of general

circulation published in Minneapolis, Saint Paul, Duluth, and Crookston, Minnesota; Chicago, Illinois; Milwaukee, Wisconsin; Detroit, Michigan; Philadelphia and Williamsport, Pennsylvania; and Boston, Massachusetts, of the sale of said lands at public auction to the highest bidder for cash at the local land office of the district within which said lands are located, said notice to state the time and place and terms of such sale. At such sale said lands shall be offered in forty-acre parcels, except in case of fractions containing either more or less than forty acres, which shall be sold entire. In no event shall any parcel be sold for a less sum than its appraised value. The residue of such lands remaining unsold after such public offering shall thereafter be subject to private sale for cash at the appraised value of the same upon application at the local land office.

"Sec. 6. That when any of the agricultural lands on said reservation not allotted under this act nor reserved for the future use of said Indians have been surveyed, the [fol. 60] Secretary of the Interior shall give thirty days' notice through at least one newspaper published at Saint Paul and Crookston, in the State of Minnesota, and, at the expiration of thirty days, the said agricultural lands so surveyed, shall be disposed of by the United States to actual settlers only under the provisions of the homestead law: Provided, That each settler under and in accordance with the provisions of said homestead laws shall pay to the United States for the land so taken by him the sum of one dollar and twenty-five cents for each and every acre, in five equal annual payments, and shall be entitled to a patent therefor only at the expiration of five years from the date of entry, according to said homestead laws, and after the full payment of said one dollar and twenty-five cents per acre therefor, and due proof of occupancy for said period of five years; and any conveyance of said lands so taken as a homestead, or any contract touching the same, prior to the date of final entry, shall be null and void: Provided, That nothing in this act shall be held to authorize the sale or other disposal under its provision of any tract upon which there is a subsisting, valid, preemption or homestead entry, but any such entry shall be proceeded with under the regulations and decisions in force at the date of its allowance, and if found regular and valid, pat-

ents shall issue thereon: Provided, That any person who has not heretofore had the benefit of the homestead or preemption law, and who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either of said laws, may make a second homestead entry under the provisions of this act.

"Sec. 7. That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made and which interest and permanent fund shall be expended for the benefit of said Indians in manner fol- [fol. 61] lowing: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares: Provided, That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act

shall have been made, until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars, less any actual interest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years, be expended in procuring livestock, teams, farming implements, and seed for such of the Indians to the extent of their shares as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars, the United States shall be fully reimbursed out of such excess for all the advances of interest made as herein contemplated and other expenses hereunder.

"Sec. 8. That the sum of one hundred and fifty thousand dollars is hereby appropriated, or so much thereof as may be necessary, out of any money in the Treasury not other-[fol. 62] wise appropriated, to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal and allotments, and the first annual payment of interest herein contemplated and provided for, which money shall be expended under the direction of the Secretary of the Interior in conformity with the provisions of this act. A detailed statement of which expenses, except the interest aforesaid, shall be reported to Congress when the expenditures shall be completed.

"Approved, January 14, 1889."

11. In reporting on H. R. No. 7935, 50th Congress, 1st Session, enacted into the Act of Congress of January 14, 1889 (25 Stat. 642), Honorable John H. Oberly, then Commissioner of Indian Affairs, to the Secretary of the Interior, January 8, 1889, said, in part, as follows:

"• • • I have given the provisions of this act very careful consideration and see no serious objection to its approval, except as to the provisions of the first section relating to the consent to cession and relinquishment, insofar as the Red Lake Reservation is concerned. It will be observed that the act provides that 'as to the Red Lake Reservation, the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-

thirds of the male adults of all the Chippewa Indians in Minnesota.'

"There are about 7,500 Chippewa Indians in the State of Minnesota, including those not residing upon any reservation, of which number 1,131 belong to the Red Lake Reservation, and none of the Indians in that State, except the Red Lake Indians, have any right, title, or interest in the Red Lake Reservation, and manifestly it would be unjust to permit 6,400 Indians to vote upon the question of the disposition of the property of 1,100 Indians in which property they have no right or interest. The Indians upon the Red Lake Reservation, may be unanimously opposed to the provisions of the bill, yet by the action of other Indians, they may in fact have no voice whatever in the matter.

"I would strongly recommend the disapproval of the bill on this ground were it not for the fact that under the act no agreement which may be made can take effect or have any validity until approved by the President. Should the [fol. 63] Red Lake Indians not agree to the provisions of the act, or should they be overreached in any manner by the other Indians and their interests and rights not respected and protected, the President may come to their relief by withholding his approval of the agreement of cession and relinquishment.

"Very respectfully, your obedient servant, Jno. H. Oberly, Commissioner."

12. The act of February 8, 1887, known as the "General Allotment Act", mentioned in section 3 of the act of January 14, 1889, provided for the allotment of lands in severalty to Indians on the various reservations and made some provisions not material here with reference to the application of the laws of the United States to the Indians. It specified in detail the amount to be allotted to the heads of families, single persons, orphan children, and other single persons, the manner in which the land should be selected, what should be done in event no allotment was selected, and provided for the appointment of special agents to make the allotments under such rules and regulations as the Secretary of Interior might prescribe.

13. Within the time prescribed by section 1 of the act of January 14, 1889, H. M. Rice, Martin Marty, and Joseph B. Whiting were duly appointed commissioners under the

provisions of the act, and instructions were given them by the Commissioner of Indian Affairs, with approval of the Secretary of Interior, in particular, that the boundaries of the tracts reserved (the diminished White Earth and Red Lake Reservations) must be definitely determined and accurately described.

These commissioners met the various bands or tribes of Chippewa Indians of Minnesota, held numerous council meetings with them at their various reservations, and prepared census rolls from which it appeared that the total of all bands of Chippewa Indians was 8,304, of which the Red Lake Indians numbered 1,168.

14. A series of councils were held by the said commissioners with the Chippewas of Minnesota, the first of which was held June 29 to July 6, 1889, with the Indians occupying and belonging to the Red Lake Reservation. The commissioners submitted a report containing a copy of the minutes of the council proceedings from which it appeared [fol. 64] that at the first council they read the act of Congress under which they were proceeding and explained in a general way the purpose of the agreement which it was proposed to negotiate with them. Speaking in such a way that they would be understood to refer to the land reserved, the commissioners told the Indians it would belong to them and their children forever, and in substance that they would reserve so much land for them that when their children grew up there would be plenty for all of them. The commissioners also told the Red Lake Indians that the other Indians had no right on this (their) reservation which was theirs alone and in reply to requests made by the Indians gave assurance that plenty of land would be reserved for them and their descendants for all purposes. Meadow and pine lands were spoken of and the quantity of pine land which the Indians desired to have reserved from the cession was discussed. The commissioners gave the Indians no assurance as to what might be done with reference to making allotments except to say in substance that no allotments would be made out of the land reserved immediately. Finally a line was drawn on paper which the Indians said marked the reservation which they were to retain. After further consultations between the commissioners and the Indians a line marking the part reserved

was agreed upon. The Indian chiefs expressed their confidence in what had been told them by the commissioners and one of the Indian chiefs said: "We want the reservation we now select to last ourselves and our children forever. I shall touch the pen with the understandiag that all you have said to us is the truth." After the line had been agreed upon, one of the commissioners said that they had some doubt as to whether the Government would approve of their yielding so much but "we will do the best we can." The testimony as a whole shows that the statements of the commissioners at the council meeting prior to the execution of the agreement were such that the Red Lake Indians would and did understand therefrom that they were not ceding any portion of their lands which in the agreement was specified as reserved.

On July 17 to 29, 1889, the commissioners held councils with the Chippewa Indians occupying and belonging on the White Earth Reservation in Minnesota. The minutes of the commissioners show that the Indians were told that whatever was left over after the allotments was theirs. The [fol. 65] Pembina Indians having signed some document previously, the Indians were told that the Red Lake Indians had said that there were some Pembinas that had some interest in their reservation, that the Secretary of the Interior also so informed them, and that was the reason why the Pembinas had signed. The evidence shows no foundation whatever for such a statement but the White Earth Indians said they had no interest in the Red Lake Reservation and one of their chiefs said that they had no right to cede any of the Red Lake lands. Thereupon the Indians were told that the commissioners had gone to the Red Lake Indians first "resolving that if we did not succeed there, we would hold no other council, but go home."

15. The commissioners negotiated ten agreements with the several bands or tribes of Chippewa Indians in Minnesota. Each of said agreements was executed in writing by said commissioners on behalf of the United States, and by the Indian signatories thereto on behalf of their several bands or tribes.

16. The agreement so negotiated with the tribes or bands of Chippewa Indians occupying and belonging to the Red Lake Reservation is as follows:

"We, the undersigned, being male adult Indians over eighteen years of age, of the tribes or bands of Chippewa Indians occupying and belonging to the Red Lake Reservation, in the State of Minnesota, do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding, the act of Congress approved January 14, 1889, entitled 'An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota' (Public, No. 13), which said act is embodied in the foregoing instrument, and after such explanation and understanding, have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act, and each and all of the provisions thereof, and do hereby grant, cede, relinquish, and convey to the United States all our right, title, and interest in and to all and so much of said Red Lake Reservation as is not embraced in the following described boundaries, to wit:

[fol. 66] "Commencing at the point on Thief River where the same crosses the line between Marshall and Polk Counties, thence easterly to the most northwesterly point of the upper Red Lake, thence easterly along the northerly shore of said upper Red Lake to a point due north of a point 1 mile east from the easterly end of the lower Red Lake, thence due south to the last-named point, thence southwesterly in a straight line to a point on Hay Creek 1 mile from where said creek enters the lowers Red Lake, thence south to a point from which a line extending west passes midway between what is called the 'big marsh' and the sugar bush north of and nearest to said marsh, said sugar bush being on the Red Lake and White Earth Road; thence west along said line between said marsh and sugar bush to Clear Water River, said line being supposed to be about 6 miles south of the lower Red Lake; thence northwesterly along said Clear Water River to the point where said river crosses the boundary of Red Lake Reservation as the same has heretofore existed, thence along said reservation line to the place of beginning, as designated on a map published in 1888 by Rand, McNally & Co., of Chicago, Ill. (but all waterways within the reservation above described are to be free for commercial purposes to all citi-

zens of the United States), for the purposes and upon the terms stated in said act, which said lands embraced within the foregoing boundaries have been reserved by the commissioners appointed under said act and as therein authorized for the purpose of making and filling the allotments therein provided for.

"Witness our hands and seals hereto subscribed and affixed at the Old Red Lake Agency, on the Red Lake Reservation, in the State of Minnesota, this 8th day of July 1889.

"Henry M. Rice (Seal), Joseph B. Whiting (Seal), Commission. B. P. Shuler, United States Indian Agent. W. C. Hubbell, Secretary to Commission."

No.	Indian name	English name	Age	Mark and seal
1	May-Dway-Gah-No-Nind	He That Is Spoken To	82	His (x) mark; seal.
2	Nah-Gon-E-Gwon-Abe	Leading Feather	71	Do.
3	Mays-Co-Co-Naw-Ay	Moose Dung	64	Do.
4	Ah-Nah-Me-Ay-Ge-Shig	Praying Day	63	Do.

(And 243 other Indian signatures.)

[fol. 67] An agreement identical in form was negotiated with the Pembina Band and an agreement was made with the Indians occupying and belonging to the White Earth Reservation substantially similar in form except there was added thereto a cession of all of their interest in the Red Lake Reservation that was not required and reserved under the provisions of the act of Congress of 1889 for making allotments to the Red Lake Indians.

17. An agreement was made with the Pillager and Lake Winnibigoshish Bands of Chippewa Indians whereby they ceded to the United States lands particularly described therein, being the lands contained in the reservation which had been set apart to them, and also ceded and relinquished to the United States all their right, title, and interest in so much of the Red Lake Reservation as was not required under the provisions of the act of 1889 to make the allotments to the Red Lake Indians.

18. Each of the said agreements so negotiated with each of the other tribes or bands of Chippewa Indians above described (save only the agreements mentioned in finding 16, supra), was substantially in the same form as the agreement mentioned in finding 17, supra, except that in the agreements with the White Oak Point Band, the Mille Lac Band, and the Otter Tail Band there were certain provisions with reference to the White Earth Reservation not necessary to be set out here. Each of these agreements

with the other bands contained a clause substantially as follows:

"We do also hereby cede and relinquish to the United States all our right, title, and interest in and to so much of the Red Lake Reservation as is not required and reserved under the provisions of said act to make and fill the allotments to the Red Lake Indians as therein provided."

19. In the report of the commissioners the number of male adults over eighteen years of age in each band which joined in such agreements and the total number of such male adults of such bands signing and assenting to the same were shown in a table, and from a summary thereof the Secretary of the Interior found that more than two-thirds of the males of the Chippewa Indians had consented to the provisions with reference to the Red Lake Reservation. [fol. 68] The said table showed that the total number of male adults of all of the bands of the Chippewa Indians of Minnesota was 2,178, and that the total number assenting to the provisions with reference to the Red Lake Reservation was 1,884 of which 324 were members of the Red Lake and Pembina bands and 1,560 were members of other bands.

20. Said commissioners after completing the census provided for by said act and the negotiations and execution of all said agreements as aforesaid on or about December 26, 1889, transmitted the same together with their report of their transactions in connection therewith, through the Commissioner of Indian Affairs to the Secretary of the Interior. The said report was, in part, as follows:

"• • • but they (the Red Lake Chippewas) did not like the provision for providing (dividing) with other bands, although when it was explained to them that the country from Lake Superior to and beyond the Red River of the North, was, by the united efforts of all the Chippewas, taken by conquest from the Sioux, and that had it not been for such united efforts, they could not have taken or held the Red Lake Reservation; they admitted the correctness of this statement, but thought some of their neighbors had received more than their due proportion of annuities from former sales.

"• • • The Chippewas of this State did unquestionably, in early times, hold their lands in common. It was so in 1825, at the time of the treaty at Prairie du Chien,

and no other idea would ever have been entertained had not the mistaken policy of purchasing a tract here and there from the bands contiguous thereto been adopted. Of the vast cessions heretofore made, there is little, and in many cases nothing, left to show any benefit derived by the Indians therefrom.

• • • • • • •

"The Red Lake Reservation, which they cede to the United States, contains 3,260,000 acres. The number of Indians occupying the same is 1,168.

"The boundaries of the diminished reservation, from which allotments to the Red Lake Chippewas are to be made, are as follows:

[fol. 69] (Then follows a description of the Red Lake diminished reservation, which description departs in language and somewhat in essence from the description appearing in the Red Lake agreement. See finding 16.)

"This is larger than they will eventually require, but as there are swamps and other untillable lands therein, it cannot be reduced until after survey and allotment shall be made."

The total area of the diminished Red Lake Reservation as described in the aforesaid agreement with the Red Lake Tribes and Bands was 661,118 acres.

21. The Secretary of the Interior thereafter and on or about January 30, 1890, transmitted the said commissioners' report and the said agreements, together with his report thereon, to the President. In his said report the Secretary of the Interior advised the President, in part, as follows:

"• • • The Red Lake Reservation, two-thirds of which at least is ceded to the United States, contains 3,200,000 acres, and the number of Indians occupying it is 1,168. The boundaries of the diminished reservation, from which allotments to the Red Lake Chippewas are to be made, are given in the report. The commissioners report that——

" 'This reservation is larger than will eventually be required, but as there are swamps and other untillable lands therein, it cannot be reduced until after survey and allotments shall be made.'

"Whether the surplus lands that may remain after allotments shall have been completed as required by the law can be disposed of without further legislation is a question which will require consideration, but such consideration is not necessary at this time."

22. Thereafter and on March 4, 1890, the President endorsed and signed his approval upon each of the said ten agreements made with the several tribes or bands of Chippewa Indians in Minnesota. The form of such approval is identical on all of such agreements, except as to the name of the tribe or band making the agreement and the reservation occupied by such tribe or band; and said form, omitting only such names, is as follows:

[fol. 70] Executive Mansion,

March 4, 1890.

This instrument in writing negotiated with the (name of tribe or band, or tribes and bands of Chippewa Indians, parties to the agreement, and the reservation or reservations occupied by them) in the State of Minnesota, under and in pursuance of the act of Congress of January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota", wherein it is also provided "That all agreements therefor shall be approved by the President of the United States before taking effect", is hereby approved.

Benj. Harrison.

On said March 4, 1890, the President transmitted said reports and agreements to the Congress together with a message reading, in part, as follows:

"To the Senate and House of Representatives:

"In pursuance of the authority and direction contained in the act of Congress approved January 14, 1889, entitled 'An act for the relief and civilization of the Chippewa Indians in the State of Minnesota,' three commissioners were appointed by the President on February 26, 1889, as therein authorized and directed, namely: Henry M. Rice, of Minnesota; Martin Marty, of Dakota; and Joseph B. Whiting, of Wisconsin, to negotiate with said Indians.

"The commissioners have submitted their final report, with accompanying papers, showing the results of the

negotiations conducted by them, and the same has been carefully reviewed by the Secretary of the Interior in his report to me thereon.

"Being satisfied from an examination of the papers submitted that the cession and relinquishment by said Chippewa Indians of their title and interest in the lands specified and described in the agreement with the different bands or tribes of Chippewa Indians in the State of Minnesota was obtained in the manner prescribed in the first section of said act, and that more than the requisite number have signed said agreement, I have, as provided by said act, approved the said instruments in writing constituting the agreement entered into by the commissioners with said Indians.

* * * * * * *

[fol. 71] "A copy of the report made by the commissioners, with the copies of all the papers submitted therewith except the census rolls, is herewith presented for the information of the Congress.

"Benj. Harrison.

"Executive Mansion,
Mar. 4, 1890."

23. The Secretary of the Interior, under date of July 31, 1922, addressed a communication to the Senate Committee on Indian Affairs, reading in part as follows:

"The following table, showing the acreage of the several reservations as they existed in 1889, and the acreage of ceded lands in each reservation, is taken from the records of the General Land Office:

Reservation	Acreage in 1889	Ceded lands
Bois Forte	103,862.73	48,210.30
Deer Creek	22,413.00	22,117.45
Fond du Lac	97,679.76	65,566.62
Grand Portage or Pigeon River	40,441.52	16,041.97
Leech Lake	90,465.75	48,105.08
Red Lake	3,569,694.29	2,905,921.28
White Earth	796,676.06	89,319.20
Chippewa of the Mississippi	563,165.51	471,623.63
Winnibigoshish	.....	.....
White Oak Point	5,133.94	2,295.43
Total	5,289,505.56	3,669,200.96

"It will be seen from the above figures that of the 3,669,200.96 acres ceded for the common benefit of all the Chip-

pewas of Minnesota, the Red Lake Bands contributed 2,905,921.28 acres, or practically two-thirds of the entire ceded areas."

On a portion of the lands ceded by the Red Lake Indians there was a dense growth of pine and other valuable timber.

On June 20, 1900, the Secretary of the Interior directed that the work of the Chippewa commission be suspended and that its final accounts be closed.

24. Henry M. Rice, who was chairman of the commission and who participated in all of the negotiations with the tribes or bands of Chippewa Indians occupying and belonging to the Red Lake Reservation leading up to and including the execution of the agreement with the Indians dated July 8, 1889, and set out in finding 16, addressed a letter dated November 9, 1892, to the Commissioner of Indian [fol. 72] Affairs, enclosing a copy of a map and making reference to another map filed in the Commissioner's office by the Chippewa Commission and, among other things, stating: "You will see that the reservation allotted the Red Lake Indians included all of the lower Red Lake, as shown by Rand & McNally's map, the only guide the commission or Indians had in locating the reservation"; and further with reference to the Indians, he suggested that there be reserved from sale and added to said reservation certain tracts of land in order to "preserve faith with the Indians and probably be satisfactory to them"; and also that—"It was with great reluctance that they gave up any part of the upper lake, and if any part of the lower lake shall be taken from them they will think they were deceived or advantage taken of their ignorance."

This letter was transmitted to the President by the Commissioner of Indian Affairs with an Executive order which he recommended the President be requested to issue. The Secretary of the Interior, on November 19, 1892, wrote to the President enclosing the communications above referred to. Thereupon, on November 21, 1892, the President made and issued the following Executive order:

Executive Mansion,
November 21st, 1892.

It is hereby ordered that the following tracts of land in the State of Minnesota, viz: fractional section 33 in town-

ship 152 north of range 32 west, and fractional sections 4, 9, 16, 17, 19, and 20, and section 21 in township 151 north of range 32 west, be, and the same are hereby, reserved from entry and sale as public lands and added to the Red Lake Indian Reservation as a part of the same for the use and benefit of the Indians thereof, with like tenure as the other lands now included within the reservation according to the terms of the agreement negotiated with said Indians by the Chippewa Commission in accordance with the provisions of the act of Congress approved January 14, 1889 (25 Stats. 642), which agreement was approved by the President March 4, 1890.

(S.) Benj. Harrison.

Ever since said date the area described in said order has been treated by defendant as an addition to and a part of [fol. 73] the Red Lake Reservation as described by metes and bounds in said agreements with the Red Lake and Pembina Bands, as above set forth.

25. No allotments in severalty have been made on the diminished Red Lake Reservation as delimited in the agreement of July 8, 1889, nor on the lands described in the said Executive order of November 21, 1892. Several communications passed between the Secretary of the Interior and the Commissioner of Indian Affairs in 1895 and 1896, in which the advisability of making the allotments to the Red Lake Indians of their reservation was discussed and for various reasons stated in these communications it was deemed not advisable to make the allotments at the time these communications were written. In a report of the Secretary of the Interior dated June 16, 1928, he stated, among other things, that the Red Lake Indians had always been decidedly opposed to alloting the reservation and because of their opposition and other matters it had not been considered practicable to make allotments to the individual members of the band.

26. Eight thousand six hundred of the Chippewa Indians in Minnesota, other than the Red Lake Band of Indians, have been allotted lands in severalty in Minnesota on the White Earth Reservation or on the reservations where

they had lived prior to the act of January 14, 1889, as follows:

Reservation	Number of allotments	Reservation	Number of allotments
White Earth	5,177	Fond du Lac	410
Boise Forte	722	Grand Portage	304
Cass Lake, including Lake Winnibigoshish	220	Leech Lake	1,763
Deer Creek	4	Total	8,600

On August 31, 1892, the Acting Commissioner of Indian Affairs sent to the chairman of the Chippewa Commission a letter acknowledging the receipt of a communication relative to the refusal of the Chippewa Commission to allot pine lands to a party named therein and stating:

"Your letter sets forth the reasons of the Commission for refusing to allot pine lands to the Chippewa Indians on the White Earth Reservation."

The Commissioner's letter advised the chairman that his office concurred in the position the Commission had taken [fol. 74] in refusing to allot pine lands to the Chippewa Indians on the White Earth Reservation, and stated that these pine lands "should be reserved from individual allotment for the common benefit of all the Indians of the reservation" unless there should not be sufficient land to make allotments to all of the Indians entitled thereto. No other instructions are found in the record of the Department of the Interior, except as to allotments made on the White Earth Reservation under the Act of 1904. Of the allotments made prior to this act to various members of the plaintiffs on the reservations above mentioned, a large number bore valuable stands of white and Norway pine timber. In making the additional allotments on the White Earth Reservation under the act of 1904, allotments were made without regard to the character of the land, and large areas of land chiefly valuable for pine were alloted.

27. Under date of January 30, 1902, a letter was addressed to the Secretary of the Interior from the mayor of Thief River Falls, Minnesota, stating that it was requested for certain reasons stated in the letter that negotiations be made with the Indians living upon the diminished Red Lake Indian Reservation, that a cession be made of a certain portion of this land to be subject to entry under

the homestead laws of the United States, and that the proceeds received from said lands should be paid to the Red Lake Indians. This communication was accompanied by a statement approving the same and signed by the senators and certain of the then representatives of the State of Minnesota.

The Indian Appropriation Act, approved March 3, 1901 (31 Stat. 1058, 1077), contained the following provision:

"That the Secretary of the Interior be, and is hereby, authorized, in his discretion, to negotiate, through any United States Indian inspector, agreements with any Indians for the cession to the United States of portions of their respective reservations or surplus unallotted lands, any agreements thus negotiated to be subject to subsequent ratification by Congress."

Under authority of the said act of March 3, 1901, the Secretary of the Interior on February 10, 1902, designated United States Indian Inspector James McLaughlin to negotiate with the Red Lake and Pembina Bands of Chippewa Indians for the cession of the western portion of the Red [fol. 75] Lake Reservation as it then existed. Instructions, approved by the Secretary of the Interior, dated February 12, 1902, were transmitted to Inspector McLaughlin for his guidance in conducting said negotiations. Resulting from said negotiations, an inchoate agreement, dated March 10, 1902, was entered into by said James McLaughlin, United States Indian inspector, on the part of the United States and by 220 male adult Indians belonging on the Red Lake Indian Reservation on the part of the Red Lake and Pembina Bands of Chippewa Indians belonging on said reservation. The said inchoate agreement was transmitted by the Secretary of the Interior to Congress by letter dated April 3, 1902.

In a discussion between Major McLaughlin and the Red Lake Indians in negotiating the inchoate agreement of March 10, 1902, the Indians referred to the former agreement made under the act of 1889 and claimed that they were promised they would not have to take any allotments and were assured by McLaughlin that the matter under negotiation was "something in which you people of Red Lake Agency alone have any interest", that if the agreement was concluded for the cession of the tract "all the

proceeds of that tract goes entirely to the Indians of the Red Lake Agency", and he offered $1,000,000 for it. The Indians stated that they accepted the offer with the understanding that their diminished reservation must remain intact for all time.

28. The said agreement referred to in the preceding finding was not ratified by Congress, and thereafter a provision was included in the Indian Appropriation Act approved March 3, 1903 (32 Stat. 982, 1009, 1010), which, among other things, authorized the Secretary of the Interior to sell all that part of the Red Lake Indian Reservation in Minnesota lying westerly of the range line between ranges 38 and 39 west of the fifth principal meridian, the proceeds thereof to be paid into the United States Treasury to the credit of the Indians belonging on said reservation. The said provision concluded as follows:

"This act shall take effect and be in force from and after its ratification by the Red Lake and Pembina Bands of Chippewa Indians belonging on the Red Lake Indian Reservation, in the State of Minnesota, a majority of the male adults of said Indians assenting thereto, and the evidence [fol. 76] thereof to be made by the proclamation of the President to the effect that this act has been duly ratified, and the Secretary of the Interior is hereby directed to submit this act to said Indians for ratification as early as is practicable."

29. Thereafter Congress passed an act which was approved February 20, 1904 (33 Stat. 46-50), as follows:

"Whereas James McLaughlin, United States Indian inspector, did, on the tenth day of March, Anno Domini nineteen hundred and two, make and conclude an agreement with the adult male Indians of the Red Lake Reservation, in the State of Minnesota, which said agreement is in words and figures as follows:

" 'This agreement made and entered into this tenth day of March, nineteen hundred and two, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Red Lake and Pembina Bands of Chippewa Indians belonging on the Red Lake Reservation in the State of Minnesota, witnesseth:

" 'Article I. The said Indians belonging on the Red Lake Indian Reservation, Minnesota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Red Lake Indian Reservation situate within the boundaries of Red Lake County, Minnesota, as said county is at present defined and organized, the tract hereby ceded being more particularly described as embracing all that part of the said Red Lake Indian Reservation lying west of the range line between ranges thirty-eight (38) and thirty-nine (39) west of the Fifth (5th) Principal Meridian, the tract of land hereby ceded approximately two hundred and fifty-six thousand one hundred and fifty-two (256.152) acres, and also hereby agree that all of said Indians now residing on the tract hereby ceded shall remove to the diminished reservation within six months after the ratification of this agreement, and shall be paid not exceeding five thousand (5000) dollars in cash by the Indians of said Red Lake Reservation out of the first payment received by them from the proceeds of this cession said five thousand (5000) dollars, or so much thereof as may be necessary, to be paid equitably to those thus removing, in proportion to the value of their respec-[fol. 77] tive improvements, which payment by said Red Lake Indians, shall be in full for all improvements which they will abandon, and also for the removal within the diminished reservation of their dead from where they are now buried on the tract hereby ceded.

" 'Article II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement, the United States stipulates and agrees to pay to said Indians, in the manner hereinafter provided, the sum of one million (1,000,000) dollars.

" 'Article III. It is understood that of the amount to be paid to said Indians, as stipulated by Article II of this agreement, the sum of two hundred and fifty thousand (250,000) dollars shall be paid in cash, per capita, share and share alike, to each man, woman and child belonging on said Red Lake Indian Reservation, within ninety (90) days after the ratification of this agreement, and the remainder of the said sum of one million dollars, viz, seven hundred and fifty thousand (750,000) dollars shall be paid

in cash, per capita, in fifteen (15) annual installments of fifty thousand (50,000) dollars each, the first of which fifteen annual installments to be paid in the month of October of the year following that in which payment of the said two hundred and fifty thousand (250,000) dollars is made, as provided in this agreement, and in the month of October of each year thereafter of the succeeding fourteen years, covering the period of said fifteen annual installments.

"'Article IV. It is further agreed that the said Indians belonging on said Red Lake Indian Reservation, Minnesota, shall possess their diminished Reservation independent of all other bands of the Chippewa tribe of Indians and shall be entitled to allotments thereon of one hundred and sixty (160) acres each, of either agricultural or pine land, the different class of land to be apportioned as equitably as possible among the allottees.

"'Article V. It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging on the Red Lake Indian Reservation, Minnesota, of any benefits to which they are entitled under existing treaties for agreements not inconsistent with the provisions of this agreement.

[fol. 78] "'Article VI. This agreement shall take effect and be in force when signed by United States Indian Inspector James McLaughlin and by a majority of the male adult Indians, parties hereto, and when accepted and ratified by the Congress of the United States.

"'In witness whereof the said James McLaughlin, United States Indian inspector, on the part of the United States, and the male adult Indians belonging on the Red Lake Indian Reservation, Minnesota, have hereunto set their hands and seals at Red Lake Indian Agency, Minnesota, this tenth day of March, A. D. Nineteen hundred and two.

"'James McLaughlin, (Seal.) United States Indian Inspector.

No.	Name		Mark	Age	
1	Kah-Bay-No-Din	Chief	x	67	(Seal.)
2	Maya-Ko-Ko-Noy-Ay	do	x	70	(Seal.)
3	Pay-She-Ke-Shig	do	x	35	(Sela.)
4	Nay-Ay-Tow-Up	do	x	54	(Seal.)
5	Ak-Mun-E-Ay-Ke-Zhig	do	x	76	(Seal.)
6	I-Con-Je-Gwon-Abe	do	x	63	(Seal.)
7	Kay-Bay-Gah-Bow	do	x	55	(Seal.)

(and 213 other male adult Indians).

"We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Red Lake Reservation, Minnesota; that it was fully understood by them before signing, and that the agreement was duly executed and signed by said Indians.

Jos. C. Roy, C. W. Morrison, Peter Graves, Interpreters.

"'Red Lake Agency, Minn., March 12, 1902.

"We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, U. S. Indian Inspector, and the two hundred and twenty (220) Indians of the Red Lake Reservation, Minnesota, to the foregoing agreement.

"Daniel Sullivan, Overseer in charge of Subagency; Frank H. Kratka, Mayor of Thief River Falls, Minn.; B. L. Fairbanks, White Earth Agency, Minn.

"Red Lake Agency, Minnesota, March 12, 1902.

"I hereby certify that the total number of male adult Indians, over eighteen (18) years of age, belonging on the [fol. 79] Red Lake Reservation, is three hundred and thirty-four (334), of whom two hundred and twenty (220) have signed the foregoing agreement.

"G. L. Scott, Maj. 10th Cavalry, Acting Indian Agent.

"Leech Lake Agency, Minnesota, March 17, 1902.

"And whereas it is deemed for the best interests of the said Indians that said agreement be amended and modified as hereafter provided: Therefore,

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said agreement be, and the same is hereby, modified and amended so as to read as follows:

"'Article I. The said Indians belonging on the Red Lake Indian Reservation, Minnesota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Red Lake Indian Reservation lying west of the range line between ranges thirty-eight

and thirty-nine, west of the fifth principal meridian, the tract of land hereby ceded approximating two hundred and fifty-six thousand one hundred and fifty-two acres, and also hereby agree that all of said Indians now residing on the tract hereby ceded shall remove to the diminished reservation within six months after the ratification of this agreement, and shall be paid not exceeding twenty thousand dollars in cash by the Indians of said Red Lake Reservation out of the first payment received by them from the proceeds of this cession, said twenty thousand dollars, or so much thereof as may be necessary, to be paid equitably to those thus removing, in proportion to the value of their respective improvements, which payment by said Red Lake Indians shall be in full for all improvements which they will abandon, and also for the removal within the diminished reservation of their dead from where they now are buried on the tract hereby ceded.

" 'Art. II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to sell, subject to the homestead laws of the United States, under rules and regulations to be prescribed by the Secretary of the Interior, in tracts not to exceed one hundred and sixty acres [fol. 80] to each individual, all of said lands, except lands remaining unsold after five years from the first sale hereunder, which may be sold without reference to the provisions of the homestead law. Said land shall be sold for not less than four dollars per acre, and shall be sold upon the following terms: One-fifth of the purchase price to be paid at the time of sale and the balance of the purchase price of said land to be paid in five equal annual installments due in one, two, three, four, and five years from date of sale, respectively, and to pay over to said Indians all of the proceeds realized from the sale of the said lands as herein provided.

" 'Art. III. It is understood that of the amount realized from the sale of said lands a sum of not exceeding three hundred thousand dollars shall be paid in cash per capita, share and share alike, to each man, woman, and child belonging on said Red Lake Indian Reservation within ninety days after the first sale herein provided for, and the remainder of the proceeds of the sale of said lands shall be

paid in cash per capita in fifteen annual installments, the first of which fifteen annual installments is to be paid in the month of October of the year following that in which the payment of the said three hundred thousand dollars is made, as provided in this agreement, and in the month of October of each year thereafter, and all moneys received after the expiration of said fifteen years shall be apportioned in like manner among said Indians and paid to them on the first day of October in each year.

"'Art. IV. It is further agreed that the said Indians belonging on the said Red Lake Indian Reservation, Minnesota, shall possess their diminished reservation independent of all other bands of the Chippewa tribe of Indians and shall be entitled to allotments thereon of one hundred and sixty acres each, of either agricultural or pine land, the different classes of land to be apportioned as equitably as possible among the allottees.

"'Art. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging on the Red Lake Indian Reservation, Minnesota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement. It is the intention of this agreement that the [fol. 81] United States shall act as trustee for said Indians to dispose of said land and to expend and pay over the proceeds as received from the sale thereof only as received, as herein provided.

"'Art. VI. This agreement shall take effect and be in force when accepted and ratified by the Congress of the United States.'

"Sec. 2. That said agreement be, and the same is hereby, accepted and ratified as herein amended.

"Sec. 3. • • •

[This section provided for the method of sale, including terms and prices of the land with some other provisions not material here, except a provision that—]

"The proceeds of said lands as realized from time to time shall be paid into the United States Treasury to the credit of the Indians belonging on said reservation. • • •

"Sec. 4. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of

the land herein described, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as a trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received as herein provided.

"Sec. 5. That this Act shall take effect and be in force from and after its passage."

30. Defendant has held and continues to hold said reservation and the moneys derived therefrom, for the sole and exclusive benefit of the Indians belonging on the Red Lake Reservation, and not for the benefit of the Chippewa Indians of Minnesota, plaintiffs herein.

31. The net proceeds of the sale of that part of the said reservation embracing 256,152 acres lying west of the range line between ranges 38 and 39 west of the fifth principal meridian was deposited in the United States Treasury to the credit of the Chippewa Indians belonging on the Red Lake Reservation and amounted to $1,268,156.84, which amount was the reasonable and actual value of said lands on the effective date of said act of February 20, 1904. Said [fol. 82] lands were substantially uniform in character, bore no timber of value, were generally level, included both tillable lands and marshy meadow areas, and were more suitable for agricultural purposes than the remaining portions of the Red Lake Reservation.

32. On the effective date of the act of February 20, 1904 (33 Stat. 46), there was standing on that portion of the Red Lake Indian Reservation lying east of the range line between ranges 38 and 39 west of the 5th principal meridian, 239,326,316 board feet of Norway and white pine timber of the then total value of $1,413,005.00, which contributed said amount to the then total reasonable market and actual value of the lands upon which the same was situated; and the then reasonable market and actual value of the lands included in that part of said reservation east of the said range line (404,966 acres) exclusive of and in addition to the said value of the pine timber thereon, was the sum of $542,128.00. Said lands were of the character, acreage, uniform value per acre, and total value (exclusive of the timber as aforesaid) shown by the following table:

Character	Acres	Average value	Total
Pine lands	40,146	$1.25	$50,182.00
Hardwood (best agricultural)	8,245	3.00	24,735.00
Nonagricultural swamp	35,939	0	0
Marshy hay land	232,081	1.25	290,101.00
Popple land	88,555	2.00	177,110.00
	404,966	.....	542,128.00

33. The number of Red Lake Indians enrolled and belonging on the Red Lake Reservation on March 4, 1890, was 1,168.

The number of Red Lake Indians belonging on the Red Lake Reservation, within the meaning of the act of February 20, 1904, on the date of the approval of said act, was 1,418.

The number of Indians belonging on said Red Lake Indian Reservation on February 26, 1927, the date of filing of plaintiffs' petition herein, was 1,736.

The number of Red Lake Indians belonging on the Red Lake Reservation steadily increased from the year 1889 to the year 1927. Their number also steadily increased between the years 1927 and 1932. In the latter year their number was 1,881.

[fol. 83] 34. Subsequent to January 14, 1889, Congress passed numerous acts, cited below, relating to the Red Lake Indian Reservation, the proceeds therefrom, and rights therein, as follows:

Act of April 14, 1896 (29 Stat. 92), granting to the Duluth & North Dakota Railroad Company right-of-way through the Winnibigoshish, Chippewa, White Oak Point, and Red Lake Indian Reservations, and for compensation to the tribal lands occupied. Section 4 of said act provided: "That the provisions of this act shall not apply to the Red Lake Reservation until the consent of the Red Lake Indians shall be obtained thereto."

Act of March 3, 1903 (32 Stat. 982, 1010), authorizing the sale of the western part of the Red Lake Indian Reservation and the payment of the proceeds thereof into the United States Treasury to the credit of the Indians belonging on said reservation, subject, however, to the acceptance of the said Indians.

Act of February 20, 1904 (33 Stat. 46-50), accepting and ratifying an agreement, as amended by Congress, with the

Indians belonging on the Red Lake Indian Reservation, wherein they cede to the United States the western part of the Red Lake Indian Reservation, in trust, to be sold for their benefit, and providing further that the Red Lake Indian Reservation thereby diminished shall belong to the Red Lake Indians exclusive of all other bands of Chippewas.

Act of February 8, 1905 (chap. 556, 33 Stat. 708), granting to the Minneapolis, Red Lake, and Manitoba Railway Company the right to select and take from the lands of the Red Lake Indian Reservation grounds adjacent to the northern terminus of said railway and not to exceed 320 acres in extent; compensation therefor to be made to the tribes of Indians residing upon said reservation.

Act of March 26, 1910 (36 Stat. 265), granting a two-year extension of time for the payment of installments due upon sales of land made pursuant to the act of February 20, 1904.

Act of February 16, 1911 (chap. 91, 36 Stat. 913), providing for the sale of unsold lands, parts of the area ceded under the act of February 20, 1904, and to be paid for as provided in section 3 of said act of February 20, 1904.

[fol. 84] Act of May 18, 1916 (39 Stat. 122, 137, 138), creating a forest reserve to be known as the "Red Lake Indian Forest" upon lands in the diminished Red Lake Indian Reservation, and providing that the net proceeds of timber sold, and other income therefrom, shall be covered into the Treasury to the credit of the Red Lake Indians.

Act of May 25, 1918 (40 Stat. 561, 572), appropriating moneys out of the proceeds from the sale of timber on the Red Lake Indian forest (see 39 Stat. 137), for the payment of expenses and for reimbursement to the Red Lake Indian tribal funds of not to exceed $15,000 for moneys expended in forest operations.

Act of February 21, 1921 (41 Stat. 1105-1107), creating the Red Lake drainage district; providing for compensation to the Red Lake Indians for property upon their reservation which may be damaged or destroyed, and providing further for the assessment and payment out of Red Lake tribal funds for the benefits which may have accrued from the operations of the said drainage district.

Act of June 14, 1932 (47 Stat. 306), directing the payment from the principal timber fund on deposit to the credit of

the Red Lake Band of $25.00 to each enrolled Chippewa of the Red Lake Band.

Act of June 16, 1933, directing payment from the principal timber fund on deposit to the credit of the Red Lake Band of $25.00 to each enrolled Chippewa of the Red Lake Band.

By numerous acts, in addition to the acts cited above, Congress annually, from 1919 to 1933, appropriated or authorized the withdrawal from tribal funds held by the United States in trust for the Red Lake Band of Chippewa Indians of various amounts, aggregating over $900,000, to be expended for the use and benefit of the said band or for the improvement of their reservation, and for the following purposes: For their support and civilization; for the support of their schools; for the support and equipment of the Red Lake Hospital and the construction of appurtenant buildings; for the erection and equipment of a saw mill, a planing mill, and a box factory, with appurtenant buildings; and for the construction, repair, and maintenance of roads, and bridges.

Act of June 30, 1919 (41 Stat. 3, 14, 15, 31).
Act of February 14, 1920 (41 Stat. 408, 419, 434).
Act of March 3, 1921 (41 Stat. 1225, 1235).
[fol. 85] Act of May 24, 1922 (42 Stat. 552, 569).
Act of January 24, 1923 (42 Stat. 1174, 1190, 1191).
Act of June 5, 1924 (43 Stat. 390, 411, 412, 413).
Act of March 3, 1925 (43 Stat. 1141, 1161, 1163).
Act of May 10, 1926 (44 Stat. 453, 474, 475, 476).
Act of January 12, 1927 (44 Stat. 934, 953, 955).
Act of March 7, 1928 (45 Stat. 200, 224).
Act of March 4, 1929 (45 Stat. 1562, 1586).
Act of May 14, 1930 (46 Stat. 279, 301, 303).
Act of February 14, 1931 (46 Stat. 1115, 1130, 1138).
Act of March 4, 1931 (46 Stat. 1552, 1568).
Act of April 22, 1932 (47 Stat. 91, 103, 112).
Act of February 17, 1933 (47 Stat. 820, 832).

35. By act of February 8, 1905 (33 Stat. 706), and proceedings had pursuant thereto there was granted by defendant to Minneapolis, Red Lake, and Manitoba Railway Company 320 acres of land out of said diminished reservation, in section 19 township 51 north of range 33 west, adjacent

to the northern terminus of said railway, defendant receiving as a consideration for said grant the sum of $5,461.20.

36. By the Indian Appropriation Act of May 18, 1916 (39 Stat. 137), it was provided that a forest reserve be created out of certain timberlands constituting part of said Red Lake Reservation as then existing; that said forest be administered in accordance with the principles of scientific forestry; that the Secretary of the Interior be authorized to sell therefrom the mature and marketable timber on bank scale and that after the payment of all expenses in connection with the administration of said forest, the net proceeds of all sales should be covered into the Treasury of the United States to the credit of the Red Lake Indians and raw interest at the rate of four percent per annum.

Pursuant to said provisions of said act, and during the period May 18, 1916, to June 30, 1927, defendant received as the net proceeds of timber sold, cut, and removed from the forest created by said act, $1,404,025.14, which said sum was deposited in the United States Treasury to the credit of the Red Lake Indians in accordance with said act.

37. During the period January 14, 1889, to January 30, 1927, the United States, although under no obligations so to do, expended out of public funds for the benefit of the [fol. 86] Chippewa Indians of Minnesota under specific appropriations the sum of $409,551.20, no part of which has been reimbursed to the United States.

38. During the period January 14, 1889, to June 30, 1927, the United States although under no obligation so to do, expended out of public funds for the Chippewa Indians of Minnesota under other than treaty appropriations the sum of $2,426,834.44, no part of which has been reimbursed to the United States.

39. From November 1, 1879, to September 1, 1918, the United States supported, maintained, and operated a non-reservation Indian school at Carlisle, Pennsylvania. The United States, subsequent to January 14, 1889, although under no obligation so to do, supported and educated therein children of the Chippewa Indians of Minnesota, the plaintiffs herein, at a cost of $31,035.98. No part of the said sum of $31,035.98 has been reimbursed to the United States.

40. The United States supports, maintains, and operates nonreservation Indian schools at Chilocco, Oklahoma; Genoa, Nebraska; Pipestone, Minnesota; and Pierre, South Dakota; and the United States, subsequent to January 14, 1889, although under no obligation so to do, supported and educated therein children of the Chippewa Indians of Minnesota, the plaintiff herein, at a cost of $692,541.48. No part of the said sum of $692,541.48 has been reimbursed to the United States.

41. The treaty with the Chippewa Indians of the Mississippi, concluded March 19, 1867 (16 Stat. 719), provided:

"Art. III. In further consideration for the lands herein ceded, * * * the United States agree to pay the following sums, to wit: * * * four thousand dollars each year for ten years, and as long as the President may deem necessary after the ratification of this treaty, for the support of a school or schools upon said reservation * * *."

Subsequent to the payment by the United States of the last of the 10 installments (19 Stat. 274) agreed in said article III to be made and subsequent to January 14, 1889, the United States although under no obligation so to do, and at the pleasure of the President in accordance with the provisions of said article III, disbursed for the maintenance of schools on the White Earth and Leech Lake Reser- [fol. 87] vations in Minnesota for the benefit of the Chippewa Indians of Minnesota the sum of $149,964.46, no part of which sum has been reimbursed to the United States.

Conclusion of Law

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law, that the plaintiffs are not entitled to recover, and it is therefore ordered that their petition be dismissed.

Opinion

Green, Judge, delivered the opinion of the court:

The plaintiffs in this case bring suit for a sum not specified in the petition, but if substantially all their claims are sustained they would be entitled to a judgment of sev-

eral millions of dollars. Both the defendant and the intervenor, the Red Lake Band of Chippewa Indians, contravene the allegations of the petition and the defendant sets up some other defenses which, in our view of the case, it is not necessary to consider. The case comes here under a congressional reference. The terms of the statute referring it, so far as material to the determination of the case, are fully set out in the findings and will be referred to in the opinion in the course of the discussion of plaintiffs' case. The act authorized this court, notwithstanding the lapse of time or statutes of limitation, to hear and adjudicate any and all legal and equitable claims which the Chippewa Indians of Minnesota may have arising or growing out of the act of January 14, 1889, or any subsequent act of Congress, which have not heretofore been determined and adjudicated on their merits by the Supreme Court or this court. The basic allegation of plaintiffs' petition is that by the act of January 14, 1889, to which reference will hereinafter be made, an agreement was made with all of the various bands of the Chippewa Indians, including the Red Lake Indians, by virtue of which "there was an immediate and complete cession of all right, title, and interest of all the different bands or tribes of said Indians and of the United States in and to all ceded lands, in trust for the exclusive use and benefit • • • [of] all the Chippewa Indians in the State of Minnesota", being the [fol. 88] plaintiffs herein; and that by the act of February 20, 1904, to which reference will hereinafter be made, the defendant unlawfully took 666,434.64 acres of land from the corpus of the trust created as above stated without compensation to plaintiffs therefor, and included the same in a new and wholly different trust created for a different body of beneficiaries, being the Red Lake Band of Chippewa Indians, and the plaintiffs ask judgment for the value of the lands which they allege to have been thus unlawfully appropriated by the defendant.

No question seems to be raised as to the right of plaintiffs to sue in the name of all of the Chippewa Indians, although the Red Lake Indians, as intervenors, deny the allegations of the petition and join with defendant in resisting the claims made by plaintiffs.

The defendant contends that prior to the agreement made with the Indians under the act of 1889 the Red Lake

Band of the Chippewa Indians had for a long time been owners of a large tract which included the lands which plaintiffs now allege to have been unlawfully appropriated. The defendant admits that by said agreement a large tract of land was ceded to the United States in trust for all the Chippewa Indians, but alleges that under this agreement another large tract which included the lands in controversy in this case was reserved to be allotted to the Red Lake Indians in severalty and that the lands so reserved continued to be the property of the Red Lake Band.

While plaintiffs do not specifically deny that the Indian title to the lands in controversy rested with the Red Lake Indians prior to the time the proceedings were commenced upon which they rely, as above stated, we think that much of the argument presented in behalf of the claims is inconsistent with the theory that the Red Lake Indians had any exclusive rights therein and it is therefore important, if not absolutely necessary, to determine the rights of the Red Lake Band with reference to the reservation which it occupied. For this purpose it is necessary to consider the history of the Chippewa Indians and in particular of the Red Lake Band so far as it is material to this subject. In so doing, for convenience, we shall use in the course of this opinion in referring to the Indian title such words as "ownership", "belonging to", or similar expressions, although it is well understood with reference to these lands and other lands commonly spoken of as being [fol. 89] owned by other tribes that the Indians actually had only a right of occupancy therein and the fee title was in the United States.

The Chippewa Indians constituted one of the largest tribes of Indians north of Mexico, and their range was formerly along the shores of Lakes Huron and Superior and extended across Minnesota into North Dakota. In the beginning of the eighteenth century the Chippewas drove the Foxes from north Wisconsin, and then turning against the Sioux drove them across the Mississippi and south to the Minnesota River and continued their westward march across Minnesota and North Dakota until they occupied the headwaters of the Red River. They had a large number of villages, bands, and local divisions scattered over a region extending a thousand miles from east to west. Some of the bands bore the names of the village, lake, or

river near which they resided. Among these was a band living about Red Lake and Red Lake River, north Minnesota, and a band living on Pembina River in extreme north Minnesota and the adjacent part of Manitoba. Eventually the various bands of the Chippewa Indians were grouped under larger divisions or subtribes which occupied certain lands, the boundaries of which were sometimes definitely known and at other times indefinite.

Beginning in 1785, numerous treaties were made with the Chippewa Nation, including major and minor subdivisions thereof. As early as 1836, and since that year, many treaties were made in which either a separate band or a few separate bands of Chippewas were made parties. By these treaties, reservations were granted in the State of Minnesota, or cessions were accepted from various bands which became grouped under the name of the Chippewas of Minnesota, and for these cessions considerations in money and services were paid by the United States to or for the benefit of the band or bands with which the treaties were made. By the treaty of September 30, 1854, the Chippewas were divided into the Chippewas of Lake Superior and the Chippewas of the Mississippi and were treated with as separate parties. By this treaty these two large subdivisions of the Chippewa Nation agreed on a north-south boundary line running through the eastern part of Minnesota which effected a division of the Chippewa country between them. This treaty shows that the Chippewas of Lake Superior relinquished their interest in the [fol. 90] lands lying to the west of the said boundary line, which includes the Red Lake Reservation.

This treaty also provided that the Fond du Lac, Bois Forte, and Grand Portage Bands relinquished absolutely any ownership in the Red Lake Reservation. This fact should be kept in mind when we come to consider the claim of the plaintiffs that at the time of the execution of the agreement of 1889 the Red Lake Reservation was owned in common by all of the Chippewa Indians of Minnesota and that for this reason it was necessary that these bands with others should relinquish their rights therein.

Between 1847 and 1873, the United States by various treaties, acts, and Executive orders, to which reference is made in findings 3 and 5, granted reservations for the sole use of and accepted cessions from one or more separate

bands of Chippewas living in Minnesota, paying valuable considerations for the ceded land to the separate band or bands with which the treaties were made. Without referring to all of these treaties, it may be said that one was made with the Chippewa Indians of the Mississippi and Lake Superior on August 2, 1847; with the Pillager Band on August 21, 1847; again with the Chippewa Indians of Lake Superior and the Mississippi on September 30, 1854; with the Mississippi, Pillager, and Lake Winnibigoshish Bands of Chippewa Indians on February 22, 1855, and again on March 11, 1863; with the Red Lake and Pembina Bands on October 2, 1863, and again on April 12, 1864; with the Chippewas of the Mississippi, the Pillager, and Lake Winnibigoshish Bands on May 7, 1864; with the Bois Forte Band on April 7, 1866; and with the Chippewas of the Mississippi on March 19, 1867.

An act of Congress approved June 19, 1860, provided for negotiations with the Red Lake and Red River Chippewas in the State of Minnesota for the extinguishment of their title to lands in that State, and resulted in a treaty with the Red Lake and Pembina Bands of Chippewa Indians on October 2, 1863, under which the Red Lake Indians ceded to the United States about 8,000,000 acres of land in consideration of payment of $20,000 per annum for twenty years and other valuable considerations. The treaty also in effect fixed the western boundary of their reservation, the eastern and southern boundaries having been delimited by the treaty of 1855. No other Indians joined in this cession or received any compensation for it, and the Gov-
[fol. 91] ernment always treated the land so ceded as a part of the public domain. The treaty of 1863 provided that the Red Lake and Pembina Indians should be paid for the land so ceded by certain annuities therein provided and there were other valuable considerations given. The treaty of 1863 was subsequently modified by the treaty of April 21, 1864, which somewhat changed the consideration to be given by the Government to the Red Lake Indians and made some other minor changes. In 1864 the Chippewas of the Mississippi, the Pillager, and Lake Winnibigoshish Bands of Chippewa Indians in Minnesota ceded certain lands to the United States, and the United States agreed to set apart for the Chippewas of the Mississippi certain lands the boundary line of which was described in part as "along

the line of the Red Lake Reservation." In 1872 the Secretary of the Interior transmitted to the House of Representatives an estimate of appropriation for surveying Indian reserves under treaty stipulations, among which was one for the survey of the Red Lake and Pembina Reservation in Minnesota set apart under the treaty of October 2, 1863, and subsequently the out-boundaries of the Red Lake Reservation were surveyed. In an Executive order of March 18, 1879, the President withdrew from sale and settlement a tract of land delimited in part by the boundaries of the "Red Lake Indian Reservation." To the President's message of January 25, 1886, was appended the report of the Secretary of the Interior in which it was said of the Red Lake and Pembina Chippewas of the Red Lake Reservation that "They own and occupy an immense area of country north of White Earth, which has never been ceded to the United States; the Indians still retaining all their original rights in the soil."

On February 11, 1887, the Commissioner of Indian Affairs stated in a communication to the Secretary of the Interior: "It should be premised that the Red Lake Reservation has never been ceded to the United States", except that by the treaty of October 2, 1863, "the Red Lake and Pembina bands of Chippewa Indians ceded to the United States all the lands claimed and owned by them in Minnesota and Dakota within certain described boundaries", and that "this cession determined the boundaries of the Red Lake Reservation on the west and south"; also that "the east boundary had previously been established by the treaty of February 22, 1855." The communication [fol. 92] also referred to the cession of a tract of land by the Mississippi Chippewas and stated that "The land lying between and north of the boundaries of these two cessions was thus recognized as the country of the Red Lake and Pembina bands, to which these Indians have all the original rights of Indian occupancy attaching to unceded Indian lands."

On January 3, 1889, in response to a request made by the President, the Commissioner of Indian Affairs reported, among other things, that none of the Indians of the State of Minnesota, "except the Red Lake Indians, have any right, title, or interest in the Red Lake Reservation." In instructions issued by the Commissioner of Indian Affairs with the approval of the Secretary of the Interior on May

24, 1889, to the Commissioners appointed under the provisions of the act of January 14, 1889, there was stated:

"*It has not heretofore been claimed by any one, and so far as the knowledge of this office extends, and certainly not by the Indians themselves, that the Red Lake Reservation is the common property of all the Chippewa Indians in Minnesota.* None but the Red Lake and Pembina bands have ever claimed an interest in said reservation, and said bands have always been recognized and regarded as the sole owners by right of original Indian occupancy, the lands having never been ceded to the United States." (Italics ours.)

As a result of the treaties or agreements with the Government and apparently by perfect agreement among themselves, the Chippewas of Minnesota long prior to the act of 1889 resided on twelve reservations, the total area of which was approximately 4,747,931 acres. Eleven of these reservations had been expressly described and set apart for the specific use of the band or bands occupying and belonging to the same, as shown by the treaties and Executive orders to which reference is hereinbefore made. The remaining reservation, comprising approximately 3,200,000 acres, was situated around Upper and Lower Red Lakes in the northwestern part of Minnesota. It was officially known as the Red Lake Indian Reservation and was occupied and used exclusively by the Red Lake and Pembina Bands of Chippewa Indians and its boundaries had been determined.

[fol. 93] From what is recited above, it will be seen that as far back as 1863, twenty-six years before the agreement was signed under which plaintiffs now make their claim, the Government conceded the ownership by the Red Lake and Pembina Bands of the lands which they occupied, and agreed to pay a large sum to them in the way of annuities in consideration of part of the land being ceded; that subsequently by repeated acts they were recognized by the Government and its various officials as the only Indians that had any right to what eventually became known as the Red Lake Reservation. Keeping in mind that this condition existed at the time when the act of 1889 was passed and the agreement made with the Red Lake Indians, we think the error of some of the conclusions upon which the case of the plaintiffs rests will be made evident as we reach them in the further discussion of plaintiffs' claims.

The plaintiffs, in support of their contention that there was a cession of all right, title, and interest which the different bands or tribes of Indians had in the Red Lake Reservation to the United States in trust for the use and benefit of all of the Chippewa Indians of the State of Minnesota, rely in part on the report of the Committee on Indian Affairs accompanying a bill known as H. R. 7935, which, after several amendments, became the act of January 14, 1889, under which the treaty of 1889 with the Chippewa Indians was subsequently made.

This report of the committee declared that—

"The so-called Red Lake Reservation is simply a remnant of unceded Indian Territory occupied at present by the Red Lake Band, but really the common property, so far as the Indian title is concerned, of all the Chippewa Indians in Minnesota."

The committee also referred to an inchoate agreement which had been made with the Chippewas of the Red Lake Reservation pursuant to provisions contained in the Indian Appropriation Act of May 15, 1886, and stated that this agreement was "open to serious objection in" giving the Red Lake Indians "in perpetuity a tribal fee title" to a million acres of land. The committee further declared that the only proper way to deal with the Indians was by allotting lands in severalty to them and breaking up their tribal relations and ownership. Another part of the report of [fol. 94] the committee said that all of the Chippewas in Minnesota really belonged to one family, and that the Red Lake Reservation was a remnant of all that country once occupied by them in common and thus a sort of common property. The committee stated that to carry out its views the bill H. R. 7935 had been prepared, which was "in the nature of a proposal to the Indians, and if not accepted by them is inoperative and nugatory. If accepted and assented to by at least two-thirds of the male adults of *each band*, the bill, if passed, becomes effective." (Italics ours.) We shall call attention later on to the last sentence, which becomes important in determining whether the bill as finally enacted is subject to the construction which plaintiffs seek to place upon it. It must be admitted that the committee report recognizes a right of other Indians in the Red Lake Reservation, but we think we have shown that it is based

upon a complete misapprehension of the facts, which were, as stated above, that the Government had as far back as 1863 recognized that the Red Lake Reservation belonged to the Red Lake Indians, that some of the other bands of the Chippewas who were expected to join in the treaty had expressly relinquished any interest in it, and that none of the other Indians claimed any interest therein and the Government had repeatedly treated the reservation as belonging exclusively to the Red Lake Indians.

While much of the argument of plaintiffs is based upon the committee report that preceded the act of January 14, 1889, plaintiffs specifically rely upon the act itself. It is insisted that this act recognized the common ownership of the Red Lake Reservation by all the Chippewas and created a trust for their benefit and the benefit of the plaintiffs. Without considering whether the Government could lawfully appropriate the lands of the Red Lake Indians for the benefit of some other bands, we proceed to an examination of the provisions of the bill which it is contended sustain this claim on the part of plaintiffs.

By Section 1 of the act the President was directed to appoint three commissioners:

"• • • to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said In- [fol. 95] dians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated."

This was followed in the act by a provision upon which the plaintiffs rely, as follows:

"• • • such cession and relinquishment shall be deeemed sufficient as to each of said several reservations, except as to the Red Lake Reservation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed

sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; and provided that all agreements therefor shall be approved by the President of the United States before taking effect."

The first of these provisions, it will be observed, provided for negotiations with the different bands or tribes of Chippewa Indians and thus recognized that each band had title to the land which it occupied independent of the others, otherwise it would have provided for negotiations with the Chippewas as a whole. It prescribed the powers which were granted to the Commissioners. It is urged by plaintiffs that the Commissioners exceeded these powers in the agreement which was made with the Red Lake Indians.

Even if this were the case, the effect of the contract made with the Indians must be determined by the terms of the agreement which they executed. But we do not think the Commissioners exceeded the powers granted by the act. In our opinion, they acted strictly in accordance with it, as will appear hereinafter from a discussion of its terms in connection with the agreements made by the Commissioners appointed thereunder and signed by the several bands of the Chippewa Indians of Minnesota.

Pursuant to the provisions of the act, Commissioners representing the Government met the various bands and tribes of Chippewa Indians of Minnesota and held coun- [fol. 96] cils and reached agreements with them separately. The first of these agreements was executed with the Indians occupying the Red Lake Reservation; next with those occupying the White Earth Reservation, and then with the other bands. Each of these agreements was executed in writing by the Commissioners on behalf of the United States and by Indian signatories on behalf of the several banks or tribes. The agreement with the Indians occupying the Red Lake Reservation recited that they had heard read and explained the act of Congress approved January 14, 1889, and had accepted and ratified the same, and that they ceded to the United States "all our right, title, and interest in and to all and so much of said Red Lake Reservation as is not embraced in the following-described boundaries, to wit:" (Here follows a description of the boundaries.) An agreement similar in form was negotiated with the Pembina Band and the agreements with the other In-

dian bands included the cession of all of their interest in the Red Lake Reservation that was not required and reserved under the provisions of the act of Congress. Two-thirds of all of the Chippewa Indians of Minnesota assented to the agreements executed as described above.

Section 3 of the act of 1889 provided for the taking of a census of the Chippewa Indians of Minnesota and after the taking of the census for making allotments of land in severalty to all of said Indians in conformity with the act of February 8, 1887, which specified in detail the amount of land to be allotted to the heads of families, single persons, orphan children, etc., and made other provisions with reference to the allotments not material here. It is insisted on the part of plaintiffs that the effect of this provision and reference to the act of 1887 was to make the cession and relinquishment contained in the agreement with the Indians of the Red Lake Reservation apply to and cover all of the land of these Indians which was not necessary to make allotments in the manner and to the extent in acres prescribed by the act of 1887. With this contention, which is the foundation of plaintiffs' case, we are unable to agree for several reasons.

At the outset, in considering the provisions of the act, it is important to keep in mind that the act itself distinguishes between the "cession and relinquishment" and the part "reserved" and this distinction appears all through [fol. 97] its provisions. The cession and relinquishment to the United States was absolute, but it was only the portion included in the "cession and relinquishment" which was conveyed to the Government in trust for the benefit of all of the Indians. The effect of the act and agreements was that all of this land ceded by the several bands was "pooled", as the common expression is. The land so ceded was to be sold by the Government and the proceeds used for the benefit of all of the Indians in common, but these provisions have no application to the part reserved. In support of their contention counsel for plaintiffs particularly call attention to the language of the act quoted above which reads: "as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota",

and argue in effect if not directly that this rendered the agreement signed by the Red Lake Indians not merely an absolute conveyance of the land ceded but a conveyance in trust of all of the land reserved for the benefit of all of the Chippewa Indians of Minnesota in common after allotments had been made in accordance with the act of 1887. It is further contended that this conveyance was absolute regardless of whether the Red Lake Indians assented thereto or not. We do not need to determine whether the provisions last quoted above made the cession absolute even if not agreed to by the Red Lake Indians for it is obvious that the provision with reference to the assent of two-thirds of all the Chippewa Indians of Minnesota applies merely to the "cession and relinquishment" and has no reference to the reservation. Neither defendant nor intervenor claims that the cession and relinquishment was not absolute. The ultimate question in the case is whether the reservation made in the agreement with the Red Lake Indians by virtue of the provisions of the act also conveyed the part reserved.

Congress, however, had no intention of depriving the Red Lake Indians of their land without their consent. This is made plain by the language of the act which instructed the Commissioners "to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment" etc. [fol. 98] This clearly implied that the consent of all of the different bands was necessary to put the agreements made with the Indian bands and each of them in force, otherwise no negotiations would be necessary. This feature of the case, however, as we have observed above, is not of importance unless it should be held that not only was the statute of 1889 embodied in the agreement with the Indians but also every provision of the act of 1887 in such a manner as to constitute the agreement a cession not only of the part specifically ceded but of the part reserved less what might be necessary to make allotments in accordance with the act of 1887. We think it clear that the agreement did not so state, but it is contended that by reference and implication it should be so construed although this contention is not harmonious with the other contention that counsel for plaintiffs make, namely, that the Commission exceeded its powers in making the reservation specified in the agree-

ment. Examination of the agreement shows clearly that part of the lands of the Red Lake Indians was ceded and relinquished and part was reserved from the grant. It is true that the part which was reserved was reserved for a certain purpose, and the Congress which passed the act intended or expected sometime it would be carried out, but nevertheless it was reserved and not ceded, and until some further action was taken the rights of the Red Lake Indians had not been lost or disposed of. In what follows we shall consider more particularly what was said in the agreement with reference to the land reserved.

It is urged on behalf of the plaintiffs that the Commissioners exceeded their authority in agreeing to the quantity of land reserved. Even if this were a fact, we think it would be entirely immaterial from any point of view, for the question is not what was the authority of the Commissioners but what land was ceded, and think it clear that the Red Lake Indians did not cede any part of their land which was reserved. Moreover the agreement was in due course confirmed. But we do not think the Commissioners exceeded their authority. The act provided for the cession out of the White Earth and Red Lake Reservations of only "so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts." It will be seen that the amount reserved was left to the judgment of the Commission, and if it made an error in judgment [fol. 99] it would have no effect upon the agreement which was entered into with the Red Lake Indians. In this connection it should be noted that while the act of 1887, referred to in the act of 1889, contained a provision with reference to the amount of land to be allotted to the heads of families, single persons, orphans, etc., this was subject to provisions by which the allotments might be increased in size and the Commissioner of Indian Affairs, in giving his instructions to the Commissioners, told them that the act provided for the allotment of lands "advantageous for agricultural and grazing purposes." The portion reserved contained some timber land and, as the report of the Commissioners showed, also a quantity of swamp and untillable land. The Commissioners were instructed that it was "necessary to exercise great care to reserve a sufficient area of land to make the required allotments"; also that

"the boundaries of the tracts so reserved • • • must be definitely determined and fixed and accurately described so that the Indians • • • [will know] just what and how much land they are parting with by *cession and relinquishment* to the United States." (Italics ours.) In our opinion, the Commissioner of Indian Affairs, by this language, correctly construed the act and defined the duties of the Commissioners who negotiated the agreement and who did no more than to carry out these instructions. The Commissioners afterwards reported, with reference to the portion reserved, that while it was larger than what would eventually be required, it could not be reduced until after survey and allotment. In other words, they were compelled to reserve a larger area of land than would otherwise be necessary in order to make sure that there would be sufficient agricultural and grazing land to make the allotments contemplated by the act.

If the provisions of the act of 1887 had been carried out, no one could determine in advance the location of the allotments because part of the land was timbered and part was neither grazing nor tillable. We need not discuss whether the Government could, notwithstanding the fact that the reserved land had not been ceded, have proceeded later to make the allotments without the consent of the Red Lake Indians thereto, for whatever may have been the purpose of the Congress that enacted the bill of 1889 no allotments were ever made out of the land reserved. On the contrary it was treated as not being subject to allotment.

[fol. 100] Finally it should be said that even if we should be mistaken in our construction of the language used in the agreement made with the Red Lake Indians when it is considered by itself and alone, there is, as we think, an all conclusive answer to the contention of the plaintiffs that the land reserved was in fact conveyed to the Government in trust—allotments to be first made and the remainder sold for the benefit of all the Chippewa Indians of Minnesota. To say the least that can be said in favor of the Red Lake Indians, the agreement was ambiguous, and under such circumstances it must be construed as the parties executing it understood its terms. In fact the courts have adopted an even stronger rule in cases where agreements were made with the Indians, and the contract was ambiguous, and that is that it must be construed as the Indians understood it.

Proceeding next to a consideration of what the Indians understood at the time the agreement was negotiated, it must be said with reference to the Committee report upon which the plaintiffs place some reliance that the Indians knew precisely nothing, for it was not mentioned to them. Nor did they know any more about the act of Congress than what they were told by the Commissioners, and this was exactly contrary to the statements made in the committee report upon which the plaintiffs rely. The evidence with reference to the negotiations with the Indians which resulted in the agreement which we have been discussing may be summarized as follows:

Pursuant to the act of January 14, 1889, the President appointed H. M. Rice, Rt. Rev. Martin Marty, and Joseph B. Whiting as commissioners to negotiate an agreement with the several bands of the Chippewa Indians of Minnesota. The commissioners first went to the Indians occupying and belonging to the Red Lake Indian Reservation and held a series of councils with them from June 29 to July 6, 1889. The commissioners made a report setting out the "minutes of the council proceedings." Extracts from these minutes are set out in finding 14 and it is not necessary to restate here what was said by the commissioners and the representatives of the Indians at these councils. It is sufficient to say that the commissioners gave the Indians of the Red Lake Reservation to understand that they were the sole owners of their reservation, and that no other [fol. 101] Indians had any interest therein; also that a boundary line was laid out for the part which these Indians ceded, and that under the agreement signed the remainder was to be kept for their benefit in perpetuity. It is true that the minutes state that the act was read and translated and the agreement signed by the Indians stated that it was fully explained, but the minutes show that from the explanation the Red Lake Indians must have understood that no other Indians had acquired or were to have any interest in the portion reserved by the agreement, and that the title of the land which was reserved after the proposed cession would be fixed and settled in the Red Lake band. We do not understand that this is seriously controverted by counsel for plaintiffs. Their contention is that none of the statements made by the negotiators or the Red Lake Indians in the course of the negotiations are competent evi-

dence, but we think the agreement of the Indians must be construed in the light of what was said to them at the time. The question now before the court is not whether the Red Lake Indians understood that the land reserved might be allotted subsequently, but whether they made any cession or conveyance to the Government of the land reserved which caused their rights to pass to other Indians. Counsel for plaintiffs cite the case of United States v. Minnesota, 270 U. S. 181, as showing that the statements made by the commissioners to the Red Lake Indians cannot be considered in determining the limits of the cession made by them. In this case it was held that a treaty cannot be annulled by the courts, and citing United States v. Brooks, 10 How. 442, where a grant was assailed as induced by fraud practiced on the Indians, the court said that such a matter could not be made the subject of judicial inquiry. But here there is no attempt to annul the agreement made by the Red Lake Indians nor any claim of fraud practiced upon them in the negotiations which led up to it. The question before the court is how the agreement which was made with them must be construed and both the defendant and the intervenor contend that it cannot properly be construed to convey the lands which were reserved in the agreement with the Red Lake Indians. On this point we think that both reason and authority concur in holding that what was told the Indians at the time the negotiations were in progress is material and controlling.

[fol. 102] In the case of Choctaw Nation v. United States, 119 U. S. 1, the court approved the doctrine laid down in the case of United States v. Kagama, 118 U. S. 375, 383, saying that the Indian tribes are the wards of the Nation and from their weakness and helplessness there arose the duty of protection and with it the power, and that this principle had always been recognized by the Executive, Congress, and this (the Supreme) Court. The court also approved an extract from the case of Worcester v. Georgia, 6 Pet. 515, 582, as follows:

"The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. • • • How the words of the treaty were under-

stood by this unlettered people, rather than their critical meaning, should form the rule of construction."

In United States v. Winans, 198 U. S. 371, this language was affirmed.

In Jones v. Meehan, 175 U. S. 1, it was said that a treaty between the United States and an Indian tribe must be construed not according to the technical meaning of its words to learned lawyers but in the sense in which it would naturally be understood by the Indians. The decision in this case is particularly applicable to the one at bar.

When learned lawyers dispute as to the proper construction of the act of 1889, we can hardly expect that the "unlettered" Red Lake Indians would understand it, even when it was interpreted to them. True the agreement recited that the act was explained to them, but the evidence shows that the commissioners who represented the Government explained to the Indians that it did not affect their ownership in the part not ceded, and that the Indians signed the agreement only when this assurance had been repeatedly made to them. If there were nothing more, we think it should be held that the lands reserved in the agreement of 1889 made by the Red Lake Indians were not ceded to the Government.

There is another feature which we think tends strongly to confirm the title of the Red Lake Indians as well as our [fol. 103] construction of the act of 1889 and the agreement made thereunder.

Both the Government and the Red Lake Indians, after the agreement of 1889, always placed the construction upon it for which these Indians now contend, and such construction was followed by all parties who had anything to do with its being carried out. A long list of decisions by the Supreme Court could be cited, holding that the construction which has been placed upon the contract by the parties who entered into it must prevail where the contract is ambiguous, and it has even been said that it is the best evidence of the intention of the parties. In the case of District of Columbia v. Gallaher, 124 U. S. 505, the Supreme Court said that the practical construction which parties put on the terms of their own contract must prevail even over the literal meaning of the contract, and this decision was followed in the case of Marietta Mfg. Co. v. United States, 73 C. Cls: 528, 547.

We have heretofore stated that no one down to the time that this claim was brought before Congress and the act which gives this court jurisdiction of the claim in suit was passed had ever denied or even questioned the title of the Red Lake Indians, except in the committee report which has been hereinbefore mentioned. When negotiations were entered into with other Chippewa Indian bands no one put such a construction upon the act as is now claimed by plaintiffs. In their council with the Indians belonging to the White Earth Reservation they told them that what was reserved of the Red Lake Reservation was reserved for the Red Lake Indians alone, and thereupon one of the chiefs said, in effect, that otherwise he would not sign the agreement; that he had no right to cede any of the Red Lake lands; and the commissioners stated that to avoid complications they had concluded to go to Red Lake first, and if they did not succeed there would hold no other councils.

After the passage of the act of 1889 and the execution of the agreement of 1889 with the Red Lake Chippewas, the Government officials continued to treat the Red Lake Indians as sole owners of their reservation as delimited by this agreement. The only exception, if it can be called an exception, is found in a report of the Secretary of the Interior made January 30, 1890, in which, after referring to the statement made by the Commissioners explaining in [fol. 104] part why so large an amount of land had been reserved, the Secretary said:

"Whether the surplus lands that may remain after allotments shall have been completed as required by the law can be disposed of without further legislation is a question which will require consideration, but such consideration is not necessary at this time."

This statement, which merely showed some doubt in the mind of the Secretary as to the construction of the act of 1889 and the agreement made thereunder, can have no bearing on the question as to what the Indians understood to be the effect of the agreement but merely shows that he was not fully informed on the subject at that time. Later proceedings, to which attention will next be called, showed that neither the Secretary of the Interior nor the Indian Bureau considered that the Red Lake Indians had parted with

their title to the land reserved in the agreement made with them.

On November 21, 1892, following a statement from the Secretary of the Interior showing what the Red Lake Indians understood to be their diminished reservation under the agreement of 1889, the President issued an Executive order withdrawing certain tracts of land in the State of Minnesota from settlement and added these tracts to the Red Lake Indian Reservation for the benefit and use of the Indians thereof, and said lands have ever since been so held.

The communication from the Secretary of Interior stated, among other things, that a letter which had been received from the chairman of the Chippewa Commission which had negotiated the agreement with the Red Lake Indians showed that the boundary as marked by a map used by the commission was not in accordance with the understanding of the Red Lake Indians, and it was accordingly recommended that sufficient of the land heretofore open to settlement be withdrawn and added to the diminished Red Lake Reservation. The President, following this recommendation, ordered that the lands described in the communication be "added to the Red Lake Indian Reservation, as a part of the same for the use and benefit of the Indians thereof." Ever since that date the area described in an agreement with the Red Lake and Pembina Indians, to-[fol. 105] gether with the addition made thereto by presidential order, has been treated and held by defendant as a reservation belonging to these Indians and no allotments in severalty have been made on the diminished Red Lake Reservation as thus delimited. It is obvious that this order of the President is entirely inconsistent with any idea that the Red Lake Reservation did not belong solely to the Red Lake Indians which occupied it.

The provisions of the act of 1889 with reference to making allotments to the Indians in severalty were never carried out with reference to the Red Lake Reservation. The reasons for not making the allotments are stated by the Commissioner of Indian Affairs in a letter dated May 9, 1896, in which he said, among other things, that at the time of the negotiations under the act of January 14, 1889, the Red Lake Chippewas were opposed to allotments in severalty and that a diminished reservation with definite bound-

aries was set aside by the agreement for the occupancy of the Red Lake Indians. The letter further recited other reasons why it was not advisable to attempt to allot the lands of the Red Lake Indians and recommended a postponement of the matter. The Secretary of the Interior concurred in this view and instructed the commission to make no allotments to the Red Lake Indians "at present." The Department, however, proceeded to make allotments of land outside of the Red Lake Reservation.

The Government thereafter proceeded to negotiate and treat with the Indians on the Red Lake Reservation on the basis that they were the owners of the Indian title thereto. In 1901 the Secretary of the Interior was authorized by act of Congress to negotiate agreements with the Indians for the cession of portions of their respective reservations or surplus unallotted lands, any agreements thus negotiated to be subject to subsequent ratification by Congress. Under this act the Secretary of the Interior in 1902 designated James McLaughlin to negotiate with the Red Lake and Pembina Indians for the cession of the western portion of the Red Lake Reservation as it then existed. McLaughlin accordingly negotiated an inchoate agreement with the Red Lake Indians. In the course of the negotiations and the discussion in relation to the matter with the Indians, the Indians again protested against the allotment of their land and said it was their understanding that there was to be no [fol. 106] allotment. McLaughlin told them that this was a matter in which they alone had any interest, that if they made the cession which he proposed all of the proceeds would go entirely to the Indians of the Red Lake Reservation, and that there would be nothing in the agreement requiring them to take any allotments. In consideration of their making the cession he offered the Indians a million dollars. The Indians accepted this, stating in substance that it was with the understanding that they were not to be required to make any allotments, that this agreement was to be final, and that their "diminished reservation must remain intact for all time." This agreement, which provided for the cession of about 256,152 acres of the Red Lake Reservation, was not ratified by Congress, which, however, passed an act authorizing the Secretary of the Interior to sell the part of the Red Lake Indian Reservation which lay within certain boundaries, the proceeds thereof

to be paid to the United States Treasury to the credit of the Indians belonging on the said reservation. The act contained a proviso that it should not take effect until after it was ratified in a certain manner by the Red Lake and Pembina Bands of the Chippewa Indians belonging on the Red Lake Indian Reservation. Subsequently the Red Lake Chippewas declined to accept the provisions of this act. Congress thereupon passed the act of February 20, 1904, which referred to the agreement which McLaughlin had made with the Red Lake and Pembina Bands and recited the agreement which he had made with them for the cession of approximately 256,152 acres, the payment therefor to be a million dollars. Further, after reciting that it was for the best interests of the Indians of the Red Lake Reservation that this agreement should be modified, it prescribed the amendments thereto, and under a new agreement to be executed the Indians then residing on the tracts ceded by it, were to be removed to the diminished reservation and paid by the Indians of the Red Lake Reservation out of the first payment received by them from the proceeds of this cession. The act further provided for the sale of lands ceded and for the payment to the Red Lake Indians of the proceeds thereof under certain terms and conditions. Article IV of the new agreement, for which provision was made, recited: "Article IV. It is further agreed that the said Indians belonging on said Red Lake Indian Reservation, Minnesota, shall possess their diminished reservation independent of all [fol. 107] other bands of the Chippewa Tribe of Indians and shall be entitled to allotments thereon • • •"; and also Article V, which read as follows: "Article V. It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging on the Red Lake Indian Reservation, Minnesota, of any benefits to which they are entitled under existing treaties for agreements not inconsistent with the provisions of this agreement."

By article IV it was agreed that the Red Lake Indians should possess their reservation independent of all of the other Chippewa Bands. It is quite apparent that Congress in passing the act of 1904, providing for the agreement which was entered into under it, did not understand it was depriving any other Indians of any rights in the Red Lake Reservation, or, in other words, when the act was passed and the agreement entered into, it was clearly understood

that no other Indians had any rights therein. This is made clear by the repeated declarations of the Government through its officials and the provisions of the act under which the other Indians were to be paid nothing. Counsel for defendant insist that article IV constituted a recognition of an outstanding claim. On the contrary, when we consider the situation and the negotiations which led to the agreement it becomes very plain why this provision was inserted in the agreement. The Red Lake Indians had heretofore ceded a very large body of land to the Government and it was explicitly understood at the time the cession was made that the diminished reservation should be theirs alone. Now they were called upon to make an additional cession, and what was said at the time of the negotiations shows that the Indians wanted this to be final and the last time they should be called upon to make any cessions. As one of their chiefs said: "We want this agreement so that the mice cannot break into it, as they have to the other agreements. *Our diminished reservation must remain intact for all time.*" (Italics ours.)

They succeeded in getting inserted in the agreement an express provision which so declared, and by article V this declaration was in effect reiterated and amplified by stating that the agreement should not be construed to deprive the Red Lake Indians "of any benefits to which they are entitled under existing treaties for agreements not inconsistent with the provisions of this agreement." Aside [fol. 108] from the two provisions quoted, it is difficult to see how Congress could make a stronger declaration of the fact that the Red Lake Indians owned their reservation exclusively than by providing for and approving an agreement with these Indians whereby they alone executed a conveyance of a very large portion of the reservation and further provided that these Indians alone should receive payment for the land so conveyed. This was in effect a declaration that no other Indians had any interest therein.

In the same manner Congress recognized the sole right of the Red Lake Indians to their reservation by passing a number of acts relating to this reservation and the proceeds of the sale of lands therefrom subsequent to the act of 1889. Although the court would take judicial notice of these acts, for convenience we have set out in finding 34 a summary of their provisions so far as they have any

bearing on the case before us. In the same finding is a list of numerous other congressional acts which recognized that the trust created by the cession of lands from the Red Lake Indian Reservation was solely for the benefit of the Red Lake Indians. This action of Congress, we think, tends to confirm the conclusions which we have above set forth.

In the opinion of the Supreme Court in Fairbanks v. United States, 223 U. S. 215, 222, 225, the Supreme Court construed together the Steenerson Act, the Nelson Act (as the act of 1889 is sometimes called), the General Allotment Act and its amendment of 1891, as they affected allotments on the diminished White Earth Reservation. It will be remembered that the White Earth and Red Lake Reservations stood on the same footing with reference to cession and relinquishment under section 1 of the Nelson Act. It would unduly extend this opinion to quote from and analyze the opinion rendered in that case. It can only be said that we think that on the whole it sustains the contention of the defendant. Plaintiffs seek to avoid this construction by asserting that this and the case of Leecy v. United States, 190 Fed. 289, pertain to allotment cases, which is true; but it became necessary to determine what land was reserved for allotments, which the court held to be the diminished reservation and also that section 4 of the Nelson Act applied only to the lands which were ceded. With reference to the Steenerson Act, the Supreme Court said [fol. 109] that it modified and changed the prior acts of Congress by superseding certain of their provisions and enlarging the quantity of land to be allotted.

Counsel for plaintiffs seem to rely on the case of Minnesota v. Hitchcock, 185 U. S. 373, although they do not attempt to construe the language of the decision. In that case, referring to the agreements made by the Red Lake Indians under the act of 1889, the court said with reference to the cession: "It was a cession of all of the unallotted lands", and also, in another paragraph, "The cession was, as we have seen, of all the unallotted lands, and the cession was of those lands 'for the purposes and upon the terms hereinafter stated.'" But we are clearly of the opinion that this language cannot be so construed as to utterly disregard the terms of the act and the agreement which was entered into with the Indians. The act and the agree-

ments pertained to all of the land which the several bands of Chippewa Indians occupied. All of this land was unallotted", and, as we have shown, the Red Lake and White Earth bands did not cede all of their lands to the Government but reserved a part thereof. If the words, "the cession was of all of the unallotted lands" are given a literal construction they do not accord with the language used by the court in its statement of the case which precedes the opinion. This statement very clearly preserved the distinction between the part ceded by the Red Lake Indians and the part reserved and stated (page 378) how the ceded lands were to be disposed of. Further on in the statement (page 379) it is said:

"Under this act a commission was appointed and an agreement made with the Indians for a cession of a large part of the Red Lake Indian reservation, which agreement was approved by the President, March 4, 1890, *the unceded portion being reserved* by the commissioners 'for the purpose of making and filling the allotments' provided for in the act." (Italics ours.)

We think the court by the words "unallotted lands" intended to refer to the lands not reserved for allotment, for this was the part of the Red Lake reservation which was ceded. In any event, the court had no occasion to pass on the question upon which the case now pending before us turns, which was not involved in the case of Minnesota v. [fol. 110] Hitchcock, and to give such a meaning to the language relied upon by plaintiffs would make it mere *obiter dicta*.

It should also be noted that the words "it was a cession of all of the unallotted lands" follow the sentence "the cession was not to the United States absolutely, but in trust." If the meaning contended for by plaintiffs be given to the second sentence it is another instance where the opinion is made in harmonious. The trust pertained only to the ceded lands, that is the lands not reserved, and they were ceded, as stated in the act, "for the purposes and upon the terms hereinafter stated", that is to be sold and the proceeds divided among all the Chippewa Indians. The Supreme Court calls attention to this as applying only to the ceded land, on page 378 of its statement of the case, and quotes at length from section 7 of the act with reference

to the disposition of the proceeds of the ceded land. The Government was not bound to make allotments to the Red Lake Indians and had it done so it would have made them over the continued protests of this band which had objected thereto from the start. We do not think the case of Minnesota v. Hitchcock, supra, supports the plaintiffs' case.

In the case of Fairbanks v. United States, supra, the Supreme Court expressly negatives the construction which counsel for plaintiffs wish to put upon the decision in Minnesota v. Hitchcock, supra, saying:

"Section 1 of the Nelson Act provides for the negotiation with the Chippewas 'for the cession and relinquishment' of their title to their reservations, 'except White Earth and Red Lake, and to all of those two *which may not be* required to *fill the allotments required by this* and *existing acts*.' (Italics ours.) The land reserved for allotments is the diminished reservation, to which we shall presently refer, and section 3 provides for its allotment."

The case of United States v. Mille Lac Band, 229 U. S. 498, is cited by plaintiffs, but when the opinion is analyzed we do not think it supports plaintiffs' position. In that case as well as in Minnesota v. Hitchcock, supra, the issue involved was not the same as in the case before us. In neither of these cases was there any issue as to whether the so-called "surplus lands" were transferred to the Government in trust, and if anything was said that might bear thereon it was clearly obiter dicta. The principal issue in [fol. 111] the Mille Lac case, supra, was the construction of a proviso contained in section 6 of the act of 1889 as to which no question is raised in the instant case. The court said this section was plain and unambiguous and should not be given a construction that would make it a mere nullity. With reference to the act in general the court quoted the language used in Minnesota v. Hitchcock, supra, that "it was a cession of all of the unallotted lands", evidently meaning as we have before explained in relation to the last-named case the lands "not reserved" for allotment as was later held in the Fairbanks case, supra.

Our construction of the language of the act as stated above is, however, not necessary to a determination of the case; for, as we have shown, the agreement with the Red

Lake Indians must be construed as the Indians had reason to understand it from the language of the negotiators and as they did understand it. The agreement and not the act must control when we determine what land was ceded.

Plaintiffs also contend that there is a large tract of land which was ceded by the agreement of 1889 for trust purposes, as provided therein, which has since been turned over to the Red Lake Indians without consideration and that the defendant is chargeable with the value of this tract The facts upon which this claim is based are as follows:

We have already seen that after protracted negotiations the commissioners and the Red Lake Indians reached an agreement upon the areas to be ceded and to be reserved. For the purpose of determining the boundaries they used the current Rand-McNally map, which was the only guide they had at that time, and marked thereon the diminished reservation believing this map to be correct. Later official maps proved that the map which they used was incorrect, in that the lower Red Lake extended farther to the eastward than was shown thereon. Being misled by this erroneous map, the parties, contrary to the intention of both, made a mutual mistake in agreeing upon a line which left a portion of the shore of lower Red Lake out of the reserved area. Later it was discovered that all of the lands which the commissioners and the Indians intended to include within the reserved area for the purposes of allotment had not in fact been included by reason of this mistake. The intention of the commissioners and the Indians was made known to the Commissioner of Indian Affairs [fol. 112] by Rice, the former chairman of the commission, who recommended that the mutual mistake be corrected by restoring certain lands to the Red Lake Reservation. The Commissioner and the Secretary of the Interior both concurred, and in accordance with the Secretary's recommendation the President issued an Executive order on November 21, 1892, and restored to the Red Lake Reservation the lands designated by the Secretary. These lands have ever since remained a part of the Red Lake Reservation. Counsel for plaintiffs contend that there was no statutory or other authority for the correction of this mistake by Executive order and that as to these lands there can be no question as to the right of plaintiffs to recover. On the contrary, we think that if it was not the intention of either

party that these lands should be ceded and they were subsequently relinquished, whether formally or informally, by the Government to the Red Lake Indians, the right of these Indians to the lands so relinquished was complete. The agreement was made with the Government. The Government concedes that the cession of these lands was by mistake and has undertaken to rectify the mistake, possibly in an irregular manner, but at all events the right of the Red Lake Indians to this land has been recognized by the Government, they are still in possession of it, and the mistake did not deprive them of their rights or give the Government any valid title thereto.

No claim based on the equities of the case can be fairly made by plaintiffs. It is true that the number of Red Lake Indians is small compared to the number of all of the other Chippewa Indians of Minnesota and that they originally occupied a very much larger tract of land than any of the other bands, but as shown by the report of the Secretary of the Interior dated July 31, 1922, "of the 3,699,200.96 acres ceded [in 1889] for the common benefit of all the Chippewas of Minnesota, the Red Lake Bands contributed 2,905,921.29 acres, or practically two-thirds of the entire ceded areas." The table showing the amount ceded by each band is found in finding 23. This shows that when the cessions of any of the other bands are considered alone the amount ceded was comparatively small. In 1904 the Red Lake Band ceded 236,152 acres more land to the United States. Altogether, if we considered the first cession made about 1863, they ceded about 11,000,000 acres of land. They [fol. 113] now occupy about 400,000 acres. On a portion of the tract ceded in 1889 there was a dense growth of pine and other valuable timber. Of their present holdings, 35,939 acres are entirely valueless, and in 1904 the whole tract was worth only $1.30 per acre, which shows that much of the remainder was of very poor quality.

The conclusions that we have reached and stated above make it unnecessary for us to proceed any further with the case. The plaintiffs' petition must be dismissed, and it is so ordered.

Whaley, Judge; Williams, Judge; Littleton, Judge; and Booth, Chief Justice, concur.

XIX. Judgment

At a Court of Claims held in the City of Washington on the 8th day of April, A. D., 1935, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law, that the plaintiffs are not entitled to recover.

It is therefore ordered and adjudged that the plaintiffs' petition be and the same is hereby dismissed.

XX. Proceedings After Entry of Judgment

On April 20, 1935, a record in re certiorari was delivered to the attorney of record.

On October 23, 1935, the order of the Supreme Court denying certiorari was filed in this court.

[fol. 114] **XXI. Amendment to Original Jurisdictional Act Approved June 22, 1936.—Filed July 6, 1936**

[Public Resolution—No. 121—74th Congress]

[H. J. Res. 415]

Joint Resolution to Carry Out the Intention of Congress with Reference to the Claims of the Chippewa Indians of Minnesota Against the United States

Whereas by the Special Jurisdictional Act Approved May 14, 1926 (44 Stat. L. 555), the claims of the Chippewa Indians of Minnesota against the United States were referred to the Court of Claims "with right of appeal to the Supreme Court of the United States by either party as in other cases", it being the intention that both parties should have the right of appeal to the Supreme Court; and

Whereas the Supreme Court has since decided that notwithstanding such a provision there is no right of appeal, in view of the Judicial Code, as amended, unless the Jurisdictional Act specifically provides that the Supreme Court

shall review a case on appeal, anything in the Judicial Code to the contrary notwithstanding: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the claims of the Chippewa Indians of Minnesota under the said Jurisdictional Act of May 14, 1926, shall be reviewed by the Supreme Court of the United States on appeal from the Court of Claims, anything in the Judicial Code, or amendments thereto, notwithstanding: Provided, That in any case heretofore decided by the Court of Claims said appeal shall be perfected by either party to the controversy within one year from the passage of this joint resolution, and an appeal shall be taken in all cases hereafter decided by the Court of Claims within three months from and after the date final judgment or decree is entered therein in the Court of Claims.

Approved, June 22, 1936.

[fol. 115] XXII. PLAINTIFFS' APPLICATION FOR APPEAL UNDER JOINT RESOLUTION APPROVED JUNE 22, 1936 (PUB. RES. No. 121, 74TH CONGRESS, 2ND SESSION), AND ALLOWANCE OF SAME—Filed July 7, 1936

To the Honorable, the Chief Justice, and Associate Justices of the Court of Claims of the United States:

The above named plaintiffs, the Chippewa Indians of Minnesota, conceiving themselves aggrieved by the judgment of this Court made and entered on the 8th day of April, 1935, in the above entitled cause, do hereby except to said judgment and appeal therefrom to the Supreme Court of the United States, as authorized in the Joint Resolution approved June 22, 1936, entitled "Joint Resolution to carry out the intention of Congress with reference to the claims of the Chippewa Indians of Minnesota against the United States," (Public Resolution No. 121, 74th Congress, 2nd Session), on the ground that the Court of Claims, in its determination of said cause erred in each of the respects indicated in the following assignments of error, to-wit:

I

In holding that the Indian title to the lands in the so-called Red Lake Reservation, at and prior to the agreements

of cession made under the Act of January 14, 1889, was [fol. 116] material to any issue in this case; and including, in its Special Findings of Fact, Findings numbered 3, 7, and 8, relating to the history of such prior title.

II

In holding that such prior title was exclusively in the Red Lake Indians.

III

In holding that the extent of the cession of lands on the so-called Red Lake Reservation was governed exclusively by the terms of the agreement with the Red Lake Indians, and in concluding therefrom that all lands included within the area described in said agreement as reserved, remained the exclusive property of the Red Lake Indians.

IV

In disregarding the cession of said Red Lake Reservation effected by agreements executed by more than two-thirds of the male adults of all the Chippewa Indians of Minnesota, whereby there was expressly ceded all and so much of the Red Lake Reservation as was not actually required to make and fill the allotments to the Red Lake Indians, in quantity and character as provided in the Act of January 14, 1889.

V

In holding neither the Act of January 14, 1889 (25 Stat. 642) nor the General Allotment Act of February 8, 1887 were made a part of the agreements with the Indians, and that no allotments to the Indians on the Red Lake Reservation were required to be made under said agreements.

VI

In holding, in effect, that plaintiffs had no right, title nor interest in the lands, and timber thereon, disposed of by [fols. 117-119] the Act of February 20, 1904 (33 Stat. 48-50) and hence sustained no loss thereby.

VII

In including in its Special Findings of Fact, Finding number 34, relating to dispositions by defendant of por-

tions of the Red Lake Reservation subsequent to January 14, 1889.

VIII

In including in its Special Findings of Fact, Findings numbered 37, 38, 39, 40 and 41, relating to claimed offsets by defendant.

IX

In holding as a conclusion of law that plaintiffs were not entitled to recover and directing that plaintiffs' petition be dismissed.

X

In entering judgment dismissing plaintiffs' petition.

And plaintiffs pray that this appeal be allowed; that a true copy of the material parts of the record, proceedings and papers in said cause and upon which said judgment was based, duly authenticated under the hand and seal of the Clerk of this Court be transmitted to the Supreme Court of the United States, as provided by law, to the end that said judgment may be reversed and said cause remanded for further proceedings in accordance with the opinion of the appellate Court.

(Signed) Webster Ballinger, (Signed) Baldwin, Holmes, Mayall & Reavill, Attorneys for Petitioners.

The foregoing application for appeal is hereby allowed this 7th day of July, 1936.

(Signed) Richard S. Whaley, Acting Chief Justice.

[fol. 120] XXIV. Notice to Respondents—Filed July 13, 1936

To the above named defendant, and to intervenors, and to their respective attorneys:

In compliance with paragraph 2 of Rule 12 of the Supreme Court of the United States, there is herewith served upon you a copy of the application for, and order allowing, the appeal of plaintiffs from the judgment entered in the above entitled cause, and of the Statement required by

paragraph 1 of said Rule. The assignments of error relied on and prayer for reversal are included in the application for allowance of the appeal. Your attention is invited to the provisions of paragraph 3 of said Rule, which reads as follows:

"Within 15 days after such service, the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such motion is made it may be opposed as provided in Rule 7, paragraph 3 (former Rule 6)."

(S.) Webster Bailinger, Washington, D. C., and Baldwin, Holmes, Mayall & Reavill, Duluth, Minnesota, Attorneys for the Chippewa Indians of Minnesota, Plaintiffs-Appellants.

Service of the foregoing notice, etc., accepted this 8th day of July, 1936.

Stanley Reed, Solicitor General, per W. M. S., Fred Dennis, Attorney for Intervenors.

[fol. 121] Citation, in usual form, showing service on Stanley Reed et al., filed July 17, 1936, omitted in printing.

[fol. 122] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 123] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANTS RELY AND DESIGNATION OF RECORD TO BE PRINTED—Filed Octoer 15, 1936

Come now appellants in the above entitled cause and adopt as their Statement of Points upon which they intend to rely in support of their appeal, the Assignments of Error

set out in their Application for Appeal, which forms a part of the record, and state that the entire record as certified to this Court from the Court of Claims, is necessary for the consideration thereof, and the printing thereof is requested.

Webster Ballinger, D. S. Holmes, Counsel for Appellants.

Service of the above and foregoing Points Upon Which Appellants Rely and Designation of Record To Be Printed, accepted this 9th day of October, 1936.

Stanley Reed (A. 2.), Solicitor General, Counsel for Appellee, United States. Fred Dennis, Counsel for Intervenor-Appellees.

[fol. 124] [File endorsement omitted.]

Endorsed on cover: File No. 40,768. Court of Claims. Term No. 228. The Chippewa Indians of Minnesota, appellants, vs. The United States and The Red Lake Band of Chippewa Indians of Minnesota (Intervenors). Filed July 25, 1936. Term No. 228, O. T., 1936.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 228

THE CHIPPEWA INDIANS OF MINNESOTA,
Appellants,

vs.

THE UNITED STATES AND THE RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA (INTERVENORS).

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT AS TO JURISDICTION.

WEBSTER BALLINGER,
BALDWIN, HOLMES, MAYALL & REAVILL,
Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 228

THE CHIPPEWA INDIANS OF MINNESOTA,
Appellants,

vs.

THE UNITED STATES AND THE RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA (INTERVENORS).

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT AS TO JURISDICTION.

(Filed July 8, 1936.)

In support of their application for the allowance of an appeal from the judgment entered in the above entitled cause, plaintiffs above named, in compliance with Rule 12 of the Rules of the Supreme Court of the United States, file this statement of the basis upon which it is contended that said Supreme Court has jurisdiction upon such appeal to review the judgment in question.

The statutory provision believed to sustain such jurisdiction is the Joint Resolution of Congress approved June

22, 1936, entitled "Joint Resolution to carry out the intent of Congress with reference to the claims of the Chippewa Indians of Minnesota against the United States" (Public Resolution No. 121, 74th Congress, 2nd Session).

This case was brought and prosecuted in the Court of Claims under the Special Jurisdictional Act, approved May 14, 1926 (44 Stat. 555), referred to in the preamble of said Joint Resolution.

Jurisdiction in the Supreme Court to review said judgment upon said appeal is believed to exist under the express language of said Joint Resolution. Jurisdiction does not depend upon any determination as to validity of any state statute, or any statute or treaty of the United States.

The case of *Sisseton and Wahpeton Bands* v. *United States*, 277 U. S. 424, involving similar litigation, and similar jurisdictional legislation, is believed to sustain the jurisdiction claimed.

The date of the judgment sought to be reviewed is April 8, 1935. The date of presentation of the application for an appeal therefrom is July 7th, 1936.

WEBSTER BALLINGER,
Washington, D. C., and
BALDWIN, HOLMES, MAYALL
& REAVILL,
Duluth, Minnesota,
Attorneys for the Chippewa
Indians of Minnesota,
Plaintiffs-Appellants.

FILE COPY

FILED
OCT 29 1936
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 228

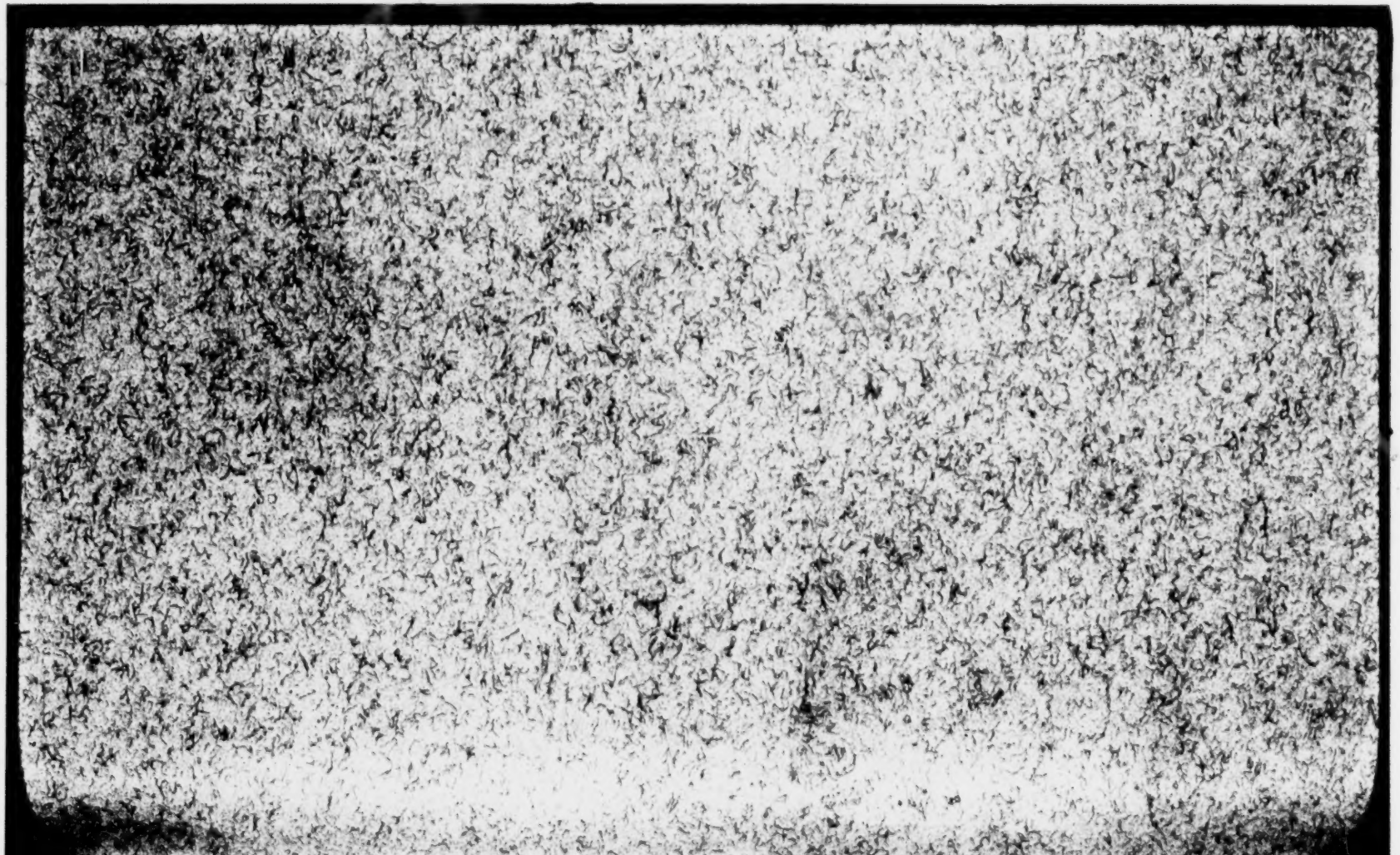
THE CHIPPEWA INDIANS OF MINNESOTA,
Appellants,

vs.

THE UNITED STATES AND THE RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA.

APPELLANTS' BRIEF.

WEBSTER BALLINGER,
Washington, D. C.;
D. S. HOLMES,
Duluth, Minn.,
Counsel for Petitioners.



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The provisions of the Act of January 14, 1889, chap. 24, 25 Stat. 642, and later legislation have been considered in:

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Fairbanks v. United States, 223 U. S. 215
United States v. Mille Lac Band, 229 U. S. 498
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 288

THE CHIPPEWA INDIANS OF MINNESOTA,
Appellants,

vs.

THE UNITED STATES AND THE RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA.
(*Intervenors*).

APPELLANTS' BRIEF.

OPINION BELOW.

The opinion of the Court of Claims is reported in 80 Ct. Cls., 410, and appears in the record at page 87.

PARTIES HERE AND BELOW.

Appellants here were Plaintiffs, and Appellees were Defendants and Intervenors in the Court below.

JURISDICTION.

The basis of the jurisdiction of this Court is set forth in appellants' Jurisdictional Statement filed and previously printed in compliance with Rule 12 of this Court.

STATEMENT OF THE CASE.

Jurisdiction of the Court Below.

This suit was brought under the special Jurisdictional Act approved May 14, 1926 (44 Stat., 555), as amended by the Act of June 18, 1934 (48 Stat., 979), the material portions of said Act, as amended, being as follows:

> "SEC. 1. That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party as in other cases, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of the Act of January 14, 1889 (25 Stat. L. 642), or arising under or growing out of any subsequent Act of Congress in relation to Indian Affairs which said Chippewa Indians of Minnesota may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States. In any such suit or suits the plaintiffs, the Chippewa Indians of Minnesota, shall be considered as including and representing all those entitled to share in the final distribution of the permanent fund provided for by section 7 of the Act of January 14, 1889 (25 Stat. L. 642), and the agreements entered into thereunder."
>
> • • • • • • •
>
> "SEC. 4. If it be determined by the Court that the United States, in violation of the terms and provisions of any law, treaty, or agreement as provided in section 1 hereof, has unlawfully appropriated or disposed of any money or other property belonging to the Indians, damages therefor shall be confined to the value of the money or other property at the time of such appropriation or disposal, together with interest at 5 per centum per annum from the date thereof; • • •."
>
> • • • • • • •

"SEC. 10. The proceeds of all amounts, if any, recovered for said Indians shall be deposited in the Treasury of the United States to the credit of the Indians decreed by said court to be entitled thereto, and shall draw interest at the rate of 5 per centum per annum from the state of the judgment or decree • • •."

The Claim Asserted.

Under the above authority, plaintiffs brought suit in the Court of Claims against defendant, United States (R. 1-22), for the value of 663,421 acres of land, and timber thereon, which they alleged were ceded to defendant under an express trust, and later disposed of by defendant in disregard of the terms of the trust, for a wholly different purpose, and without any consideration therefor.

Defendant's Traverse.

To plaintiffs' petition defendant filed a General Traverse (R. 23).

Authority For, and Intervention By, the Red Lake Band of Chippewa Indians of Minnesota.

By the Act of May 18, 1928 (45 Stat. 601; R. 38), it was provided:

"That in case numbered H-76 heretofore filed in the Court of Claims under and in pursuance of an Act of Congress entitled 'An Act authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims,' approved May 14, 1926 (Forty-fourth Statutes at Large, page 555), wherein the Chippewa Indians of Minnesota are parties plaintiff and the United States is party defendant, if the Court of Claims shall determine that the said Chippewa Indians are entitled to recover a judgment against the United States upon the cause of action therein set forth, the said court

shall further determine whether such judgment, or any part thereof, shall be paid by the United States out of funds held by the United States in trust for the Red Lake Band of Chippewa Indians of Minnesota, and if the court shall so determine and said funds are found inadequate, then the unsatisfied portion of said judgment shall be paid by the United States, but in no event shall any part of the land of the Red Lake Reservation be used in any way in payment thereof; and the said Red Lake Band of Chippewa Indians is hereby authorized on the approval of this Act, to appear in said suit by their attorneys employed in accordance with the provisions of existing law, and defend their rights in the matter."

Thereafter the Red Lake Band of Chippewa Indians of Minnesota moved the Court for leave to intervene in the pending suit, to which motion plaintiffs objected on the ground, among others, that the motion was premature, and after argument the Court overruled the objection and allowed the motion. Thereupon said Red Lake Band of Chippewa Indians filed their petition in intervention (R. 23).

Special Findings of Fact.

Thereafter the case came on for hearing and the Court made and filed Special Findings of Fact (R. 36), conclusion of law (R. 87), and its opinion (R. 87). Motion for new trial and amended findings was filed, and the Court thereafter filed an order and memorandum allowing certain requested amendments to the Special Findings of Fact, and with those exceptions, overruled the motion for new trial (R. 34-5).

(a) *The Basic Facts Found By The Court Or Shown By Public Records, Upon Which Appellants Rely.*

Appellants, the Chippewa Indians of Minnesota, constitute the class designated and described in the Act of Jan-

uary 14, 1889 (25 Stat. 642), and the agreements entered into pursuant thereto, as "all the Chippewa Indians of Minnesota" (F. 2, R. 37), and under the express language of the Jurisdictional Act, include and represent all those Indians entitled to share in the final distribution of the permanent fund provided for by Section 7 of the Act of January 14, 1889, and the agreements entered into thereunder (Act of June 18, 1934, 48 Stat. 979, *supra*, p. 2—).

The Antecedent History.

The Chippewa (or Ojibway), was one of the largest tribes of Indians north of Mexico. In the beginning of the eighteenth century, the Chippewa Nation, after driving the Foxes from northern Wisconsin, turned against the Sioux and drove them across the Mississippi River and south to the Minnesota River, and continued their westward march across Minnesota and North Dakota. After this conquest the Chippewas had a large number of villages, bands and local divisions scattered over a region extending a thousand miles east and west. Some of the bands bore the name of the village, lake or river near which they had taken up their residence. One of these was a band living about Red Lake, the issue of whose then living members intervened in this suit as the Red Lake Band of Chippewa Indians of Minnesota (F. 3, R. 37-8).

Beginning in 1785 and continuing thereafter, numerous treaties were made with the Chippewa Nation, or with major, or minor subdivisions thereof. Commencing in 1836 and continuing thereafter, the United States made treaties with separate bands, or groups of bands, for cessions of the tribal lands, and setting aside specified portions of the tribal lands for the use of the band or bands made parties thereto, wholly ignoring the tribe as a whole (F. 3, R. 37). As a result of this policy, on and long prior to the Act of January

14, 1889, the Chippewas in Minnesota resided on twelve reservations, the total area of which was approximately 4,747,931 acres (F. 4, R. 38). Of the twelve reservations, *eleven had been expressly described and set apart under the express language of prior treaties or Executive Orders for the exclusive use of the separate band or bands occupying and belonging to the same* (F. 5, R. 39), numbering 7,136 members (F. 13, R. 64).

The *twelfth* "reservation" was not in fact a reservation in the usual sense. It comprised an area of 3,200,000 acres, lying and situate around upper and lower Red Lake in northern Minnesota, *and had never been described, prior to January 14, 1889, in any single treaty or Executive Order.* It was officially known as the Red Lake Reservation, and was occupied and used exclusively by the Red Lake and Pembina Bands of Chippewas (F. 6, R. 39), numbering 1,168 Indians (F. 13, R. 64). It formed a part of the country taken from the Sioux by the Chippewa Nation as a whole (F. 3, R. 37), and *no provision of any treaty, Act of Congress, or Executive Order had ever conferred exclusive right thereto in the Red Lake and Pembina Bands.*

The Indian Appropriation Act of May 15, 1886 (24 Stat. 29, 44), contained the following provision:

> "To enable the Secretary of the Interior to negotiate with the several tribes and bands of Chippewa Indians in the State of Minnesota for such modification of existing treaties with said Indians and such change of their reservation as may be deemed desirable by said Indians and the Secretary of the Interior, and as to what sum shall be a just and equitable liquidation of all claims which any of said tribes now have upon the Government."

Under the authority contained in said Act (F. 9, R. 51), the Secretary of the Interior caused to be negotiated two inchoate agreements with Indians occupying ten reserva-

tions in Minnesota, and forming integral parts of "The Chippewas of the Mississippi" as recognized in the treaty of 1854. No agreements were negotiated with the Fond du Lac and Grand Portage Bands occupying two reservations in Minnesota, and forming a part of "The Chippewas of Lake Superior." The first of said inchoate agreements was with the Indians occupying nine reservations (R. 52), said Indians having 5,637 members, and the lands dealt with, aggregating 1,379,633 acres (R. 52), were treated as the common property of said 5,637 Indians. The second inchoate agreement was with the Red Lake and Pembina Bands numbering 1,103 and undertook to deal with the approximately 3,200,000 acres of land within the so-called Red Lake Reservation as the exclusive property of said two bands (R. 52).

The two inchoate agreements were transmitted to Congress for ratification. They were considered by the Committee on Indian Affairs of the House of Representatives, who reported to the House, recommending their disapproval largely because the Secretary had dealt with the approximately 3,200,000 acres on the so-called Red Lake Reservation as the exclusive property of the 1,103 members of the Red Lake and Pembina Bands occupying said reservation, and in substitution therefore, the House Committee introduced, and recommended the passage of, the bill known as H. R. 7935. In its report accompanying said bill, the Committee set out its reasons for rejecting said inchoate agreements and the objects and purposes intended to be accomplished by the bill (R. 52). The reasons for rejecting the inchoate agreements (R. 53-4), *inter alia*, were:

> That the Red Lake Reservation comprising 3,200,000 acres was occupied by only 1,100 Indians, while the other 6,000 Indians occupied 1,500,000 acres;
>
> That the agreements proposed to sell 2,400,000 acres of the Red Lake Reservation, give the entire pro-

ceeds to the 1,100 Indians occupying that reservation, and to set aside for the 1,100 Indians in perpetuity the remaining 800,000 acres of that reservation, while the other 6,000 Indians were to be limited to the proceeds to be received from the remaining 1,500,000 acres, less such land as was necessary to make allotments to them; which division the Committee considered unfair and unwise in every view, particularly as the so-called Red Lake Reservation was simply a remnant of unceded Indian territory and really the common property, so far as the Indian title was concerned, of all the Chippewa Indians in Minnesota;

That it was conceded on all hands that the only safe and practical way to civilize the Indians was to allot lands in severalty to them—breaking up their tribal relations and ownership in common and putting them to work on their several allotments;

That the agreement with reference to the Red Lake lands not only did violence to what was then conceded to be the proper policy to pursue, but was particularly calculated to build up an Indian land monopoly and oligarchy, more than that which then existed among the so-called civilized tribes in Indian territory.

The objects and purposes sought to be obtained by the bill (R. 55), *inter alia*, were:

To "break up their tribal relations and make them full citizens" by removing all the Indians from the small out-lying and scattered reservations to the White Earth Reservation and there allotting them land in severalty, except the members of the Red Lake Band, numbering 1,100 who were to be allotted land in severalty on the Red Lake Reservation.

The residue land, remaining after all allotments were made, to be surveyed and classified into pine and agricultural lands; the pine land, after proper appraisal, to be sold at public auction to the highest bidder,

but at not less than the appraised price, and the agricultural lands to be sold under the Homestead Laws, the proceeds to be received from all the surplus lands, less the necessary expenses attending the survey, appraisal and disposal, to be deposited in the Treasury of the United States in a permanent interest-bearing fund, the interest and principal of which were to inure to the benefit of all the Indians in common.

The bill was in the nature of a proposal to the Indians and if not accepted by them was inoperative and nugatory; if accepted and assented to by at least two-thirds of the male adults, it would become effective.

Attention is invited to said report in its entirety (R. 52-5).

(b) *The Act of January 14, 1889.*

The bill thus reported to Congress, with slight amendment, became the Act of January 14, 1889, and is set out in full in Finding 10 (R. 55). It is here summarized as follows:

By Section 1 the President was directed to appoint three Commissioners to proceed as soon as practicable

"to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota except the White Earth and Red Lake Reservations, and *to all and so much of these two reservations* as in the judgment of said commission *is not required to make and fill the allotments required by this and existing acts and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms* hereinafter stated: and such cession and relinquishment shall be deemed sufficient as to each of said several reservations, *except as to the Red Lake Reservation*, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe

of Indians occupying and belonging to such reservations; *and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota;* and provided that all agreements therefore shall be approved by the President of the United States before taking effect • • •."

"And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, *and for the purpose* of making the *allotments* and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and before completing the same, *make an accurate census of each tribe or band,* classifying them into male and female adults, and male or female minors; and the minors into those who are orphans and those who are not orphans, giving the exact number of each class, and making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior, and the other with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States shall be deemed full and ample proof of the assent of the Indians, and *shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided.*" (Italics ours.)

Section 2 is procedural only, and not here material.

Section 3, (R. 57), provides that upon the completion of the census and when the cessions and relinquishments have been obtained, approved and ratified as provided in Section 1, all of the Chippewa Indians in Minnesota except those at Red Lake should be removed to the White Earth Reservation. Then follows this provision:

"Thereupon there shall, *as soon as practicable,* under the direction of said commissioners, *be allotted*

lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, *in conformity with the Act of February eighth, eighteen hundred and eighty-seven,* * * *."*

Sections 4, 5, and 6 (R. 58-60), deal with the sale of all ceded lands, and the timber thereon, by the United States. Section 4 provides for the survey and examination of the ceded lands by forty-acre lots, the classification of the lands into pine lands and agricultural lands and the estimating of the quantity of pine timber thereon, together with the valuation of such timber at not less than $3.00 per thousand feet, board measure. Section 5 provides for the sale of the pine lands to the highest bidder for cash at not less than the appraised value of the timber thereon. Section 6 provides for the disposal of the agricultural lands under the provision of the Homestead Law at the rate of $1.25 per acre.

Section 7 (R. 61):

"That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota *as a permanent fund,* which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal

shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; *and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares:* Provided, That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof." (Italics ours.)

The Act of February 8, 1887 (24 Stat. 388), in conformity with which allotments were to be made, definitely fixed the quantity of agricultural land to be allotted each Indian and made provision for arbitrary allottments to Indians who failed to select land (F. 12, R. 63), as follows:

"To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section;

To each other single person under eighteen years of age * * *, one-sixteenth of a section. * * *."

"when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands in quantities as above provided shall be made to each individual."

"SEC. 2. * * * That if any one entitled to an allotment shall fail to make a selection within four years

> after the President shall direct that allotments be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner."

After the appointment of the Commissioners under the Act of January 14, 1889 (F. 13, R. 63), the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, instructed said Commissioners that the boundaries of the tract reserved at Red Lake "must be definitely determined and accurately described."

The Commissioners met with the various bands of Chippewa Indians in Minnesota; held numerous council meetings with them on their various reservations and prepared census reports as required by the Act (F. 13, R. 64).

(c) *The Agreements.*

The Commissioners negotiated ten agreements with the several bands or tribes of Chippewa Indians in Minnesota. Each of said agreements was executed in writing by the Commissioners on behalf of the United States, and by the Indian signatories thereto on behalf of their several bands or tribes (F. 15, R. 65).

The first agreement of cession was with the Indians occupying and belonging to the Red Lake Reservation (Fs. 14 and 16, R. 64, 66), and is as follows:

> "We, the undersigned, being male adult Indians over eighteen years of age, of the tribes or band of Chippewa Indians occupying and belonging to the Red Lake Reservation, in the State of Minnesota, *do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understand-*

ing, the act of Congress approved January 14, 1889, entitled 'An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota' (Public, No. 13), *which said Act is embodied in the foregoing instrument, and after such explanation and understanding, have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act, and each and all of the provisions thereof,* and do hereby grant, cede, relinquish, and convey to the United States all our right, title and interest in and to all and so much of said Red Lake Reservation as is not embraced in the following described boundaries, to wit:''

(Here follows a description of 661,118 acres, F. 20, R. 69.)

''*for the purposes and upon the terms stated in said act, which said lands embraced within the foregoing boundaries have been reserved* by the commissioners appointed under said act and as therein authorized *for the purpose of making and filling the allotments therein provided for.*'' (Italics ours.)

The Pembina Band of Indians had joined with the Red Lakes in the treaties of October 2, 1863 and April 12, 1864 (F. 7, R. 39), but in 1889, 218 members of said band were residing on the White Earth Reservation, and the Commissioners, evidently believing it was desirable to include them in the agreement with the Indians occupying and belonging to the Red Lake Reservation, requested them to, and they did, execute (F. 16, R. 67), a separate paper in the form of an agreement of cession which was identical in all respects with the agreement executed by the Indians occupying and belonging to the Red Lake Reservation, except as to date, band, individual signers and residence.

Thereafter the Commissioners negotiated eight additional agreements with the bands or tribes occupying or belonging to the remaining eleven reservations (Fs. 17, 18,

R. 67). The agreement with the Indians occupying and belonging to the White Earth Reservation embodied in its entirety the Act of January 14, 1889 (Ex. Doc. 247, 51st Cong., 1st Sess., pp. 35-8), and the remaining seven agreements embodied said Act by reference, as in the agreements with the Red Lake and Pembina Bands. None of these eight agreements contained any description of the land reserved at Red Lake, but each contained identical provisions (Fs. 16, 17, R, 66, 67; H. R. Ex. Doc. 247, 51st Cong., 1st Sess., pp. 38, 43, 46, 50, 57, 60, 61, 64), as follows:

> "and we do also hereby cede and relinquish to the United States all our right, title, and interest *in and to all and so much of the Red Lake Reservation as is not required and reserved under the provisions of said act, to make and fill the allotments to the Red Lake Indians in quantity and manner as therein provided.*" (Italics ours.)

(NOTE.—The Court in its Finding 18, p. 68, last line, omitted, following the word "Indians" and before the words "as therein provided," the words "in quantity and manner," as will appear from an examination of the Congressional document above cited, of which this Court is requested to take judicial notice.)

The total number of male adults of all the Chippewa Indians in Minnesota was 2,178. The signers of the Red Lake and Pembina agreements numbered 324. The male adults of the other bands signing the eight agreements last described, total 1,560 (F. 19, R. 68). As the Court of Claims said in its "Memorandum on Motion for a New Trial" (R. 35):

> "Without including any of the Red Lake or Pembina Bands, more than two-thirds of all of the Chippewa Indians of Minnesota consented to the provisions of the agreements made with reference to the Red Lake Reservation."

On December 26, 1889, the Commission, having completed the census and secured the agreements of cession, transmitted the same, together with a written report of their work, to the Secretary of the Interior (F. 20, R. 68). In their report the Commission directed special attention to the cession of lands on the Red Lake Reservation and the excessive withdrawal (F. 20, R. 69) as follows:

> "The Red Lake Reservation, *which they cede to the United States, contains 3,260,000 acres.* The number of Indians occupying the same is 1,168.
>
> "The boundaries of the diminished reservation, from which allotments to the Red Lake Chippewas are to be made, are as follows:
>
> (Then follows a description of the Red Lake diminished reservation, which description departs in language and somewhat in essence from the description appearing in the Red Lake agreement. See Finding 16.)
>
> "*This is larger than they will eventually require, but as there are swamps and other untillable lands therein, it cannot be reduced until after survey and allotment shall be made.*" (Italics ours.)

The total area of the diminished Red Lake Reservation as described in the aforesaid agreements with the Red Lake and Pembina Bands was 661,118 acres (F. 20, R. 69).

On January 30, 1890, the Secretary of the Interior transmitted the report of said Commissioners and the accompanying papers, together with his report thereon, to the President. In his report he advised the President (F. 21, R. 69), in part, as follows:

> "• • • The Red Lake Reservation, two-thirds of which at least is ceded to the United States, contains 3,260,000 acres, and the number of Indians occupying it is 1,168. The boundaries of the diminished reserva-

tion, from which allotments to the Red Lake Chippewas are to be made, are given in the report. The commissioners report that—

"'This reservation is larger than will eventually be required, but as there are swamps and other untillable lands therein, it cannot be reduced until after survey and allotments shall be made.'

"*Whether the surplus lands that may remain after allotments shall have been completed as required by the law can be disposed of without further legislation is a question which will require consideration, but such consideration is not necessary at this time.*" (Italics ours.)

On March 4, 1890, the President endorsed his approval on each of said agreements and on the same day transmitted the same, accompanied by all the papers, by message in writing to Congress (F. 22, R. 70), in part, as follows:

"Being satisfied from an examination of the papers submitted that the cession and relinquishment by said Chippewa Indians of their title and interest in the lands specified and described in the agreement with the different bands or tribes of Chippewa Indians in the State of Minnesota was obtained in the manner prescribed in the first section of said act, and that more than the requisite number have signed said agreement, I have, as provided by said act, approved the said instruments in writing constituting the agreement entered into by the commissioners with said Indians."

On June 20, 1900, the Secretary of the Interior directed that the work of the Chippewa Commission be suspended and its accounts closed (F. 23, R. 72).

(d) *The Addition To The Reserved Lands By Executive Order.*

On the recommendation of Henry M. Rice, former chairman of the Chippewa Commission, who negotiated the

agreement with the Red Lake Indians, the President, by executive order dated November 21, 1892, withdrew 2,303 acres of the ceded lands and added them to the withdrawal on the Red Lake Reservation (F. 24, R. 72-3), the authority for which nowhere appears.

(e) *The Taking of the 663,421 Acres In The Withdrawal at Red Lake By Defendant.*

In 1902, no allotments had been made the Indians on the Red Lake Reservation and none were in prospect (F. 25, R. 73). In January of that year the City Council of Thief River Falls, Minnesota, addressed a letter to the Secretary of the Interior requesting "for certain reasons stated in the letter" that negotiations be entered into with the Indians living on the diminished Red Lake Reservation for the cession of certain of their lands to be subject to entry under the Homestead Laws of the United States, and that the proceeds received from said lands should be paid to the Red Lake Indians. This communication was transmitted to the Secretary by a statement in writing signed by the Senators and certain of the then Representatives of the State of Minnesota approving the same (F. 27, R. 74-5).

The Indian Appropriation Act, approved March 3, 1901 (31 Stat. 1058, 1077), contained (F. 27, R. 75), the following provision:

> "That the Secretary of the Interior be, and is hereby authorized, in his discretion, to negotiate, through any United States Indian inspector, agreements with any Indians for the cession to the United States of portions of their respective reservations or surplus unallotted lands, any agreements thus negotiated to be subject to subsequent ratification by Congress."

The Secretary of the Interior, relying on the authority contained in said Act (R. 75), on February 10, 1902, desig-

nated United States Indian Inspector James McLaughlin to negotiate with the Red Lake and Pembina Bands of Chippewa Indians for the cession of the western portion of the Red Lake Reservation as it then existed. Instructions, approved by the Secretary of the Interior, dated February 12, 1902, were transmitted to Inspector McLaughlin for his guidance in conducting said negotiations. Resulting from said negotiations, an inchoate agreement, dated March 10, 1902, was entered into by the Indian Inspector, on the part of the United States and by 220 male adult Indians on the part of the Red Lake and Pembina Bands of Chippewa Indians belonging on said reservation. The said inchoate agreement was transmitted by the Secretary of the Interior to Congress by letter dated April 3, 1902, but was never ratified (F. 28, R. 76).

Thereafter there was included in the Indian Appropriation Act approved March 3, 1903, a provision (F. 28, R. 76), which, among other things, authorized the Secretary of the Interior to sell all that part of the reserved lands on the Red Lake Reservation lying westwardly of the range line between ranges 38 and 39 west of the 5th principal meridian, comprising 256,152 acres (F. 28, R. 76), the proceeds thereof to be paid into the United States Treasury to the credit of the Indians belonging on said reservation, with a proviso that said provision should not become effective unless assented to by a majority of the male adults of the Red Lake and Pembina Bands residing on said reservation (F. 28, R. 76).

The Indians declined to accept said provision, and thereafter Congress, by the Act approved February 20, 1904 (F. 29, R. 76-82), directed the sale of said 256,152 acres and the payment of the proceeds received therefrom in annual per capita payments to the Indians belonging on said Red Lake Reservation. Said Act further provided that the In-

dians belonging on said Red Lake Reservation *should possess their diminished reservation independently of all other bands of the Chippewa tribe of Indians and that nothing contained in said Act should be so constructed as to deprive the Indians on the Red Lake Reservation of any benefits to which they were entitled under existing treaties or agreements not inconsistent with the provisions of said Act.*

(f) *Acreage Taken and Value.*

Defendant has held and continues to hold said reservations and the moneys derived therefrom, for the sole and exclusive benefit of the Indians belonging on said Red Lake Reservation, to the exclusion of all other Chippewa Indians of Minnesota (F. 30, R. 82). No allotments have ever been made on said reservation (F. 25, R. 73). The net proceeds received from the sale of said 256,152 acres, and amounting to $1,268,156.84, were deposited in the Treasury of the United States solely to the credit of the Chippewa Indians belonging on the Red Lake Reservation, and represented the fair market value of said lands as of February 20, 1904 (F. 31, R. 82). On the effective date of said Act of February 20, 1904, the reasonable value of the Norway and White pine timber standing on the remaining part of said reservation was $1,413,005.00, and the reasonable market value of the remaining lands was $542,128.00 (F. 32, R. 82-3), giving a total value for the entire reservation as it stood at the date of said Act of $3,223,289.84.

(g) *Indians on Red Lake Reservation.*

The number of Indians occupying and belonging on the Red Lake Reservation as shown by the census taken under the said Act of January 14, 1889, was 1,168 (F. 33, R. 83), composed of (H. R. Ex. Doc. No. 247, 51st Cong., 1st Sess.,

p. 9), the following classes: male adults 303; female adults 359, male minors 237; female minors 247; male orphans 15; and female orphans 7. Allotments to said Indians under the Act of February 8, 1887 (24 Stat. 388; F. 12, R. 63), would have required 73,980 acres of agricultural land, upon the basis of 80 acres each to the male and female adults and male and female orphans, numbering 684, and 40 acres each to the male and female minors, numbering 484, leaving a surplus of 589,441 acres.

The number of Indians belonging on the Red Lake Reservation within the meaning of the Act of February 20, 1904, on the date of the approval of said Act, was 1,418 (F. 33, R. 83), but the number of adults, minors and orphans comprising said total membership is not shown. Their number has steadily increased from 1889 until on February 26, 1927 when they numbered 1,736 (F. 33, R. 83).

(h) *Judgment of the Court, and Appeal Therefrom.*

On the facts as specially found by the court below, it concluded as matter of law, that plaintiffs were not entitled to recover and that their petition should be dismissed (R. 87), its reasons therefor being set out in a written opinion (R. 87-113). Thereafter plaintiffs moved the court for amended Findings of Fact and new trial. The court rejected all requested amendments except one and denied new trial (R. 35). On April 8, 1935, judgment was entered dismissing plaintiffs' petition (R. 113). On May 6, 1935, petition was filed in this Court (Case No. 42) for a Writ of Certiorari to review the judgment entered in the Court of Claims and on October 14, 1935, denied (296 U. S.). Thereafter and on June 22, 1936, the President approved Public Resolution No. 121, 74th Congress (R. 114-15), under which this appeal was prosecuted (R. 115), to this Court.

ASSIGNMENT OF ERRORS.

Appellants assign as error that the court erred in each of the following respects (R. 115-17):

I.

In holding that the Indian title to the lands in the so-called Red Lake Reservation, at and prior to the agreements of cession made under the Act of January 14, 1889, was material to any issue in this case; and including, in its Special Findings of Fact, Findings numbered 3, 7, and 8, relating to the history of such prior title.

II.

In holding that such prior title was exclusively in the Red Lake Indians.

III.

In holding that the extent of the cession of lands on the so-called Red Lake Reservation was governed exclusively by the terms of the agreement with the Red Lake Indians, and in concluding therefrom that all lands included within the area described in said agreement as reserved, remained the exclusive property of the Red Lake Indians.

IV.

In disregarding the cession of said Red Lake Reservation effected by agreements executed by more than two-thirds of the male adults of all the Chippewa Indians of Minnesota, whereby there was expressly ceded all and so much of the Red Lake Reservation as was not actually required to make and fill the allotments to the Red Lake Indians, in quantity and character as provided in the Act of January 14, 1889.

V.

In holding neither the Act of January 14, 1889 (25 Stat. 642) nor the General Allotment Act of February 8, 1887,

were made a part of the agreements with the Indians, and that no allotments to the Indians on the Red Lake Reservation were required to be made under said agreements.

VI.

In holding, in effect, that plaintiffs had no right, title nor interest in the lands, and timber thereon, disposed of by the Act of February 20, 1904 (33 Stat. 48-50), and hence sustained no loss thereby.

VII.

In including in its Special Findings of Fact, finding number 34, relating to dispositions by defendant of portions of the Red Lake Reservation subsequent to January 14, 1889.

VIII.

In including in its Special Findings of Fact, findings numbered 37, 38, 39, 40, and 41, relating to claimed offsets by defendant.

IX.

In holding as a conclusion of law that plaintiffs were not entitled to recover and directing that plaintiffs' petition be dismissed.

X.

In entering judgment dismissing plaintiffs' petition.

QUESTIONS FOR DECISION.

Two primary questions are here presented for decision:

Did the agreements, approved March 4, 1890, effect a cession of all lands on the Red Lake Reservation, except enough lands to make allotments in the quantity and of the character defined in the Act of January 14, 1889 (24 Stat. 642), to the Indians residing thereon?

If so, did the Act of February 20, 1904 (33 Stat. 46-50; R. 76-82), effect such an appropriation or disposal within the meaning of Section 4 of the Act of May 14, 1926 (44 Stat. 555; R. 2-3), of the ceded lands as entitles appellants to recover their value?

SUMMARY OF ARGUMENT.

This suit is for the recovery of the value, as of February 20, 1904, of so much of 663,421 acres of land, and timber thereon, as would not have been required to make allotments of land at the time, in the quantity, and of the character directed in the Act of January 14, 1889, to the members of the Red Lake and Pembina bands of Chippewa Indians occupying or belonging on the land. The allotments were directed to be made "as soon as practicable" after March 4, 1890. On that date the number of Red Lake and Pembina Indians entitled to allotments out of the land, was 1,168, and the total acreage required to make allotments of land chiefly valuable for agricultural purposes to each of them was 73,980.

The lands in suit are within an area described in the Act of January 14, 1889 as the "Red Lake Reservation". The reservation came into being through a succession of treaties with the Chippewas whereby they ceded to the United States their original right of occupancy to the surrounding lands. There was no formal setting apart of the land in suit, nor any affirmative declaration in any treaty, law of Congress, or executive order of the rights of any particular band of Chippewa Indians therein. It was merely a remnant of unceded Indian lands occupied in 1889 by members of the Red Lake and Pembina Bands of the Chippewa Indians, and so far as the Indian title is concerned, was the property of the Chippewa Indians (Assignment of Error II, *supra*, p. 22; Argument, *infra*, pp. 34-39).

Appellants' title is grounded upon the Act of January 14, 1889, and agreements made with all the eleven bands of Chippewa Indians in Minnesota and approved by the President on March 4, 1890, all in strict conformity with the authorization and directions contained in the Act. By the Act and the agreements, all land and timber thereon embraced in the Red Lake Reservation, except enough land to make allotments at the time, in the quantity, and of the character described in the Act to the members of the Red Lake and Pembina Bands residing or belonging thereon, were ceded to the United States under an express trust. The Act is set out in full in the Record (pp. 55-62), and is summarized in appellants' Statement of Fact (*supra*, pp. 9-13), to which references are here made to avoid repetition. The agreement made with the Red Lake Band appears textually in the findings of the court below (F. 16, R. 66-7); the agreements with the remaining ten bands are summarized in the findings of the court below (Fs. 16, 17, 18, R. 66-7), and in appellants' Statement of Fact (*supra*, pp. 13-17), and the Act and agreements considered in appellants' Argument (*infra*, pp. 39-60), to which references are here made.

The court below apparently concedes that if appellants are correct in their contention with reference to the extent of the cession, they are entitled to recover, but held that there was no cession effected by the Act and agreements of any of the land in suit.

The express provision appearing in section 1 of the Act authorizing "two-thirds of the male adults of all the Chippewa Indians in Minnesota" to make the cession, followed by cession agreements in writing signed by more than two-thirds of the male adults of all the Chippewa Indians in Minnesota, ceding all the land not required "to make and fill the allotments to the Red Lake Indians in quantity and manner" as in the Act provided, and the approval by the

President of the cession agreements, which approval the Act declared (Sec. 1), should "operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever" render (1), immaterial to a determination of appellants' rights a consideration of the Indian title at and prior to January 14, 1889 (Assignment of Error II, *supra*, p. 22; Argument, *infra*, pp. 34-9, and (2), foreclosed consideration of that question by the Courts (Assignment of Error I, *supra*, p.22; Argument, *infra*, pp. 29-33).

The validity of the cession of the lands in suit was in nowise dependent upon the consent of two-thirds of the adult male members of the Red Lake and Pembina Bands, nor upon the consent of two-thirds of the adult male members of each of the eleven bands, in view of the express provision contained in the Act authorizing "two-thirds of the male adults of all the Chippewa Indians in Minnesota" to make the cession, followed by the cession made by the requisite two-thirds, and the approval thereof by the President (Assignment of Error III, *supra*, p. 22; Argument, *infra*, pp. 39-59).

The cession of all land in suit, except enough to make allotments at the time, in the quantity, and of the character, described in the Act, to members of the Red Lake and Pembina Bands residing or belonging thereon, by more than "two-thirds of the male adults of all the Chippewa Indians in Minnesota" to defendant, United States, and the approval of the agreements of cession by the President, effected a valid cession of the surplus lands to the United States impressed with the express trust defined in the Act and under which appellants were the sole beneficiaries (Assignment of Error IV, *supra*, p. 22; Argument, *infra*, pp. 39-59).

The Act was, in express terms, embodied in and made a part of each of the ten agreements, and was expressly ac-

cepted and ratified by the Indians as recited in each agreement. The Act (Sec. 3), directed allotments of land at the time, in the quantity, and of the character therein expressly defined to the members of the Red Lake and Pembina Bands; the United States, as Trustee, expressly agreed to make the allotments, and the Red Lake and Pembina Bands expressly agreed to accept their allotments, in conformity with the provisions of the Act. Neither the failure of the United States, as Trustee, to make the allotments, nor the failure of the Red Lake Indians, in breach of their promise to take their allotments, could operate to defeat appellants' rights in and to the surplus lands (Assignment of Error V, *supra*, p. 22; Argument, *infra*, pp. 39-59).

The withdrawal of 2,303 acres of the lands theretofore admittedly ceded, by the Act of January 14, 1889 and the agreements entered into and approved thereunder, to defendant, United States, under the express trust, for the exclusive benefit of appellants, and the inclusion of the withdrawn lands in the lands in suit, was without authority of law, and clearly constituted a taking of this land within the meaning of Section 4 of the Jurisdictional Act of May 14, 1926, as amended, for which plaintiffs are entitled to recover (*infra*, pp. 59-60).

In disregard of the mandate contained in the Act of January 14, 1889 and the agreements entered into and approved thereunder, no allotments had been made to the members of the Red Lake and Pembina Bands, and there had been no segregation of the surplus lands in suit. By the Act of February 20, 1904, defendant, United States, took the surplus lands in suit and conferred title thereto upon the members of the Red Lake and Pembina Bands, to the exclusion of all the other Chippewa Indians in Minnesota, in disregard of its trust obligations, and resulting in complete loss to appellants. This constituted a taking of the land within the meaning of Section 4 of the Jurisdictional Act of

May 14, 1926, as amended, and authorizes recovery of the fair value of the lands and timber taken. The court below apparently concedes that if the lands in suit were ceded by the Act of January 14, 1889 and the agreements entered into thereunder, appellants are entitled to recover the value thereof (Assignment of Error VI, *supra*, p. 23; Argument, *infra*, pp. 39-70).

The inclusion in the Special Findings of Fact by the court below of Finding 34 was improper, as the language appearing in the Act of February 20, 1904, is clear and unambiguous, and there was no occasion to make resort to antecedent records. If, however, resort to antecedent records was permissible, then the entire record should have been considered, and not merely such portions thereof as tended to support the conclusion of the Court (Assignment of Error VII, *supra*, p. 23; Argument, *infra*, pp. 60-5).

The inclusion in the Special Findings of Fact by the court below of Findings numbered 37, 38, 39, 40 and 41, relating to claimed offsets by defendant, was improper in view of the statement of the court below, appearing in its memorandum opinion on appellants' petition for re-hearing, that it "did not decide that any item or items of expenditures made by the Government was proper offsets under the bill which gave this Court jurisdiction of the case" (Assignment of Error VIII, *supra*, p. 23; Argument, *infra*, pp. 70-3).

The conclusion of the court below that appellants were not entitled to recover, directing that plaintiffs' petition be dismissed, that judgment be entered accordingly, and the entry of the judgment, were error (Assignment of Errors IX and X, *supra*, p. 23; Argument, *infra*, pp. 39-73).

ARGUMENT.

We will now consider the errors assigned, and in aid of clarity, we will first consider separately assignments I and

II, which run to fundamental errors upon which the opinion of the Court below is pivoted.

Assignment of Error I

> "That the Court erred in holding that the Indian title to the lands in the so-called Red Lake Reservation, at and prior to the agreements of cession made under the Act of January 14, 1889, was material to any issue in this case; and including, in its Special Findings of Fact, findings numbered 3, 7 and 8, relating to the history of such prior title."

The conclusion of the lower Court that appellants' petition should be dismissed (R. 113), is pivoted upon the Indian title to the Red Lake Reservation at and long prior to the Act of January 14, 1889, which it finds was exclusively in the Red Lake Band (R. 88-93, 98-9). Counsel for appellants insist that the prior title was not open to consideration by the trial Court, and hence could form no basis for a determination of the claim asserted.

The Jurisdictional Act of May 14, 1926 (44 Stat. 555) (R. 1, 36, Sec. 1), conferred jurisdiction on the Court of Claims to hear, determine, and render judgment "in any and all legal and equitable claims arising under or growing out of the Act of January 14, 1889. • • • which said Chippewa Indians of Minnesota may have against the United States." Section 4 (R. 2-3), directed the lower Court, if it found "that the United States, in violation of any law • • • or agreement as provided in Section 1 hereof, has unlawfully appropriated or disposed of any money or other property belonging to the Indians," to enter judgment for the value thereof at the time of the appropriation or disposal.

Thus the Act of January 14, 1889, is definitely made the starting point, and the basis of all claimed rights. Section 1 of that Act (R. 56-7), declared that the cession of the

Red Lake Reservation should be sufficient if made by "two-thirds of the male adults of all the Chippewa Indians in Minnesota," and conferred upon the President the exclusive authority to determine whether the requisite two-thirds had, in fact, executed the agreements of cession, thus impliedly, if not expressly, recognizing the common ownership of this unceded Indian land in all the Chippewas, and expressly conferring exclusive authority upon "two-thirds of all the male Chippewa Indians in Minnesota" to make the cession of the Red Lake Reservation.

That this provision for a valid and binding cession of the Red Lake Reservation by all the Chippewas of Minnesota constituted a recognition by Congress of their common ownership of this unceded area, is perhaps plain enough from the language of the Act. But if there be any doubt of this conclusion, we may look to the reports of the committees of Congress to aid in construction. *Duplex Co.* v. *Deering*, 254 U. S. 443. The report of the committee of the House reporting the bill which became the Act under consideration states (R. 53):

> "The so-called Red Lake Reservation is simply a remnant of unceded Indian Territory, occupied at present by the Red Lake band, but really the common property, so far as the Indian title is concerned, of all the Chippewa Indians in Minnesota."

There can be no serious doubt on this record of the intent of Congress by the Act in question to recognize and affirm this common title.

In view of this Congressional action and the subsequent approval of the agreements by the President, neither the power of two-thirds of the male adults of all the Chippewas to make the cession, nor the validity of the cession made by them was open to consideration by the trial Court,

United States v. *The State of Minnesota*, 270 U. S. 181, at 201-2.

Certainly, under the decision in that case, the express declaration by Congress of the right of two-thirds of the male adults of all the Chippewas to cede the Red Lake Reservation, and the subsequent approval by the President of the cession thus effected, effectually set at rest any question of the prior title which is no longer "the subject of judicial inquiry."

The rule of *United States* v. *The State of Minnesota*, recognizing the conclusive effect of the acts of the legislative and executive branches in accepting such cessions, is particularly applicable here, where Congress was admittedly dealing merely with the aboriginal Indian title or right of occupancy which, until the same was ceded under an explicit trust by the agreements in question, was, of course, wholly subject to the plenary power of Congress over tribal Indian property.

In addition, the Red Lake and Pembina bands as well as all the other Indians, by the very agreements here in question, expressly "consented and agreed to said Act and accepted and ratified the same and all of the provisions thereof". By so doing they thus accepted and ratified the provisions of that Act as to the manner in which the cession of the Red Lake Reservation was to be effected as fully as any other provision, and thereby effectually assented and agreed that the cession of the Red Lake Reservation be effected as provided in the Act, *i.e.*, "by two-thirds of all the male adult Chippewa Indians in Minnesota". This assent is not only evidenced by the express words of approval and ratification of the Act embraced in the Red Lake and Pembina agreements above quoted, but is confirmed and rendered unassailable by the estoppel arising from the fact that for more than forty years the Red Lake Indians have participated in the payments and

benefits of the trust for all the Chippewas created under and in strict accordance with the Act so assented to.

At the same time the bands of Chippewas other than those of Red Lake entered into their several agreements and relinquished their respective reservations to the common trust, in reliance upon the provisions of the Act which stated in plain terms their common right to cede to the United States (and thus place in trust for the common benefit of all) not only their own lands, but all of the Red Lake Reservation not actually required for allotments to the Red Lake Indians, and by the express terms of their eight separate agreements, executed by more than the required two-thirds of the male adults of all the Chippewas in Minnesota, these other bands did in fact cede to the common trust not only their own reservations, but also all of the Red Lake Reservation not required for allotment.

As a result, *no matter how exclusive may have been the title of the Red Lake Indians,* they, having expressly approved and assented to and accepted the benefits of an Act authorizing the disposition of the Red Lake lands by two-thirds of the male adults of all the Chippewas, are bound by the disposition so made. In consequence, *regardless of the state of the Indian title,* the extent of the cession at Red Lake is not to be determined from the terms and exceptions embraced in the Red Lake and Pembina agreements of cession (upon which the court below in fact solely relied), but from the terms of agreements of cession signed by two-thirds of the adult males of all the Chippewas. Thus, since more than two-thirds of the adult males signed agreements (made with the other bands) ceding all and so much of the Red Lake Reservation as was not required for allotments to the Red Lake Indians, the attempted exception of an area of land in excess of that required for allotments embraced in the Red Lake agreement, and any failure of the Red Lake Indians to join in any cession of such

excess lands becomes wholly immaterial, *regardless of their prior title.*

For the foregoing reasons it is submitted that *regardless of the state of the Indian title to the Red Lake Reservation prior to the Act of 1889,* the validity of the declaration by Congress as to the persons authorized to effect the cession, and the resulting cession, by the persons so authorized, of all and so much of that reservation as was not required to make the allotments, was not open to question by any party to this suit.

In consequence, the state of such former Indian title was wholly immaterial to any issue involved, and the inclusion of the findings relating thereto was error.

In this connection we desire to emphasize that the error of the court below in this regard lies at the very foundation of the decision below, and constitutes one of the fundamental errors which underlie the judgment appealed from. Finding, as it did, that the exclusive Indian title to the Red Lake Reservation prior to 1889 was in the Red Lake and Pembina bands, and overlooking the conclusive effect of the express provisions of the Act of 1889, and the express assent of the Red Lake and Pembina Indians to those provisions, the court below determined the case upon the theory that the extent of the cession at Red Lake was to be determined *solely by the terms of the Red Lake and Pembina agreements,* and concluded that the vast area described solely in those agreements as reserved for allotments, was not ceded at all. (See Opinion below, R. 93, 95, 98-9.) The Court gave no effect whatever to the cessions made by the other bands, who, by agreements signed by the necessary two-thirds of the male adults of all the Chippewas of Minnesota, ceded all of the Red Lake Reservation which was not both (1), required, and (2), reserved, for the allotments to the Red Lake Indians.

Assignment of Error II.

"The court erred in holding that such prior title was exclusively in the Red Lake Indians."

While the opinion of the Court nowhere expressly so states, it is apparent that the Court intended to hold that the 1,168 Indians occupying the vast area of 3,200,000 acres known as the Red Lake Reservation were vested with the exclusive Indian title thereto at and prior to the time of the passage of the Act of January 14, 1889.

As pointed out above, it is the contention of appellants that whatever may have been the actual state of this Indian title prior to the Act of 1889, Congress, by that Act, and particularly by that portion of Section 1 thereof which authorized the cession of the Red Lake Reservation by "two-thirds of the male adults of all the Chippewa Indians in Minnesota", recognized the Indian title thereto of all the Minnesota Chippewas and the consequent right of the Minnesota Chippewas as a whole to cede the same, even over the objection of the Red Lake Band alone, and that since Congress thus recognized the right of all the Chippewas of Minnesota, as distinct from the Red Lake Band, to effect a cession of this reservation, and a cession having been effected in strict accordance with the Congressional authority, the question of the authority and title of the parties making the cession cannot be inquired into by the Court, but is a political question finally and conclusively determined by Congress.

It is our further contention that the express assent by the Red Lake Indians to the provisions of the Act of 1889 (including the provisions as to the manner in which the Red Lake Reservation was to be ceded), and their subsequent acceptance of the benefits of the Act, necessarily subjected their title, whatever it may have been, to the pro-

visions of the Act, and constituted a conclusive assent to the cession of the Red Lake Reservation by "two-thirds of the male adults of all the Chippewas in Minnesota".

In consequence it is submitted that the actual state of the Indian title to the Red Lake Reservation prior to the Act of 1889 is not of controlling importance here.

The history of this Indian title is, however, helpful to an understanding of the motives which actuated Congress in singling out the Red Lake Reservation and providing for its cession "by two-thirds of the male adults of all the Chippewas in Minnesota", while each of the other reservations was to be ceded by a like proportion of the male adults of the Indians occupying the same.

The early history of this reservation is summarized in the Court's findings 3, 4, 5 and 6 (R. 37-9), whereby it appears that all of the Chippewa country in Minnesota was originally taken by the Chippewa Nation as a whole by conquest from the Sioux, the various bands of Chippewas being thereafter scattered through the vast area thus conquered and gradually becoming known by the names of lakes and rivers near which they resided.

The Government originally treated with the Chippewa Nation as a whole, as appears from Finding 3, but it soon commenced the practice of negotiating for cessions of lands from the individual bands located adjacent to the lands acquired. Thus there grew up an apparently unjustified theory of separate ownership in the various bands. As the Commission appointed under the Act of 1889 stated in its report to the Commissioner of Indian Affairs (F. 20, R. 68):

> "• • • The Chippewas of this State did unquestionably, in early times, hold their lands in common. It was so in 1825, at the time of the treaty at Prairie du Chien, and no other idea would ever have been entertained *had not the mistaken policy of purchasing a tract here and there from the bands contiguous thereto*

been adopted. Of the vast cessions heretofore made, there is little, and in many cases nothing, left to show any benefit derived by the Indians therefrom." (Italics ours.)

In the course of the various treaties with individual bands above referred to, reservations were frequently set aside specifically for the separate use of the band or bands making each respective treaty. As a result, when the Act of 1889 was passed, eleven of the twelve Chippewa reservations existing in Minnesota had been specifically designated for the exclusive use of the band occupying the same by the terms of the respective treaties which created said reservations. This was not true, however, of the tract of unceded land commonly known as the Red Lake Reservation which was occupied by only 1,168 Chippewa Indians known as the Red Lake and Pembina Bands, and embraced an area of 3,200,000 acres. This tract had never been expressly described in any single treaty or Executive Order (F. 6, R. 39), and was correctly described in the report of the Committee of the House of Representatives which reported the bill that became the Act of 1889 as follows:

> "The so-called 'Red Lake Reservation' is simply a remnant of unceded Indian Territory occupied at present by the Red Lake Band, but really the common property, so far as the Indian title is concerned, of all the Chippewa Indians in Minnesota."

Of this reservation this Court said in *Minnesota* v. *Hitchcock*, 185 U. S. 373 at 389:

> "The land remained on March 4, 1890, land the fee of which was in the United States but subject to the Chippewa Indians' right of occupancy. No patent had ever been executed by the United States to the Indians in severalty, or to the tribe at large. The mere calling of the tract a reservation instead of unceded Indian

lands did not change the title. It was simply a convenient way of designating the tract."

The origin of the reservation is more graphically described in *United States* v. *Holt State Bank*, 270 U. S. 49, 58 as follows:

> "The reservation came into being through a succession of treaties with the Chippewas whereby they ceded to the United States their aboriginal right of occupancy to the surrounding lands. The last treaties preceding the admission of the state were concluded September 30, 1854, 10 Stat. 1109, and February 22, 1855, 10 Stat. 1165. There was no formal setting apart of what was not ceded; nor any affirmative declaration of the rights of the Indians therein, nor any attempted exclusion of others from the use of navigable waters. The effect of what was done was to reserve in a general way for the continued occupation of the Indians what remained of their aboriginal territory, and thus it came to be known and recognized as a reservation. Minnesota v. Hitchcock, 185 U. S. 373, 389, 22 S. Ct. 650, 46 L. Ed. 954."

Thus as a result of the "mistaken policy of purchasing a tract here and there from the bands contiguous thereto," about 6,400 Chippewa Indians were confined upon eleven small reservations aggregating in all 1,500,000 acres of land while the Red Lake Band, numbering 1,168 were occupying the vast unceded area, embracing 3,200,000 acres, commonly known as the Red Lake Reservation.

It was in recognition of this unjust situation, occasioned by the "mistaken policy" above referred to, for which defendant was solely responsible, that Congress in the Act of 1889 made the different and separate provision with regard to the Red Lake Reservation, and specifically provided for its cession if assented to by the necessary proportion *of all the Chippewas in Minnesota as a whole*, thus render-

ing it possible for the Chippewas as a whole, even over the objection of the Red Lake Band, to cause so much of the reservation as should not be required for allotment, to be ceded to the United States in trust for the common benefit of all.

With this history of this reservation in mind, it becomes apparent that the court below attached excessive importance to the fact that the United States had under the treaties of October 2, 1863 and April 21, 1864, accepted cessions from the Red Lake Indians alone of certain lands contiguous to the Red Lake Reservation. These treaties were merely fair examples of the "mistaken policy" of treating with separate bands above referred to.

It is also apparent from the foregoing history of the reservation as well as from the H. R. Committee report quoted by the Court in its Finding of Fact 9 (R. 52-5), that Congress, by providing for a cession of the Red Lake Reservation by all of the Chippewa Indians of Minnesota, instead of by the Red Lake Band alone, did not intend to wrongfully deprive the Red Lake Indians of anything which they fairly owned, without their consent, but did intend to remedy, so far as possible, the unjust consequences which would have resulted from a recognition of exclusive title in the Red Lake Indians.

The ruling of the lower Court was based upon three interdepartmental communications (Op., R. 92), the first two, (F. 8, sub-pars. 5, 6, R. 50), from the Commissioner of Indian Affairs to the Secretary of the Interior and dated January 1886 and February 11, 1887, respectively, and the third (R. 92), from the Commissioner of Indian Affairs to the Commissioners appointed under the Act of January 14, 1889, dated May 24, 1889 (F. 8, sub-par. 8, R. 51). In all three of said communications it is stated, in substance, that the Red Lake and Pembina Bands were the *exclusive* own-

ers of the Red Lake Reservation, and in the last communication (R. 51, Op. R. 92), that none but the Red Lake and Pembina Bands had ever claimed an interest in said reservation, said bands having "always been recognized as the sole owners by right of original Indian occupancy, the lands having never been ceded to the United States". These three communications constitute at best mere legal conclusions drawn from facts not stated, wholly without supporting evidence, and untrue in fact, and the documents are incompetent to prove any fact other than that the communications were written, which is conceded (*Mohawk Condensed Milk Co.* v. *U. S.*, 70 Ct. Cls. 671, at 678).

The inclusion of said three communications in the record, as proof of any fact, other than that the three communications were written, and the reliance thereon by the lower Court, as proof of the facts and conclusions as to the title to the reservation therein stated, was obvious error.

Assignment of Errors III, IV, V, VI and IX.

These assignments allege that the court erred:

> "In holding that the extent of the cession of lands on the so-called Red Lake Reservation was governed exclusively by the terms of the agreement with the Red Lake Indians, and in concluding therefrom that all lands included within the area described in said agreement as reserved, remained the exclusive property of the Red Lake Indians."
>
> "In disregarding the cession of said Red Lake Reservation effected by agreements executed by more than two-thirds of the male adults of all the Chippewa Indians of Minnesota, whereby there was expressly ceded all and so much of the Red Lake Reservation as was not actually required to make and fill the allotments to the Red Lake Indians, in quantity and character as provided in the Act of January 14, 1889."
>
> "In holding neither the Act of January 14, 1889 (25 Stat. 642) nor the General Allotment Act of February

8, 1887 were made a part of the agreements with the Indians, and that no allotments to the Indians on the Red Lake Reservation were required to be made under said agreements."

"In holding, in effect, that plaintiffs had no right, title nor interest in the lands, and timber thereon, disposed of by the Act of February 20, 1904 (33 Stat. 48-50) and hence sustained no loss thereby."

"In holding as a conclusion of law that plaintiffs were not entitled to recover and directing that plaintiffs' petition be dismissed.

The above five Assignments of Error are so inter-related that separate consideration would necessitate unnecessary repetition. To avoid this, they are hereinafter dealt with in their logical sequence.

An examination of the opinion of the Court of Claims indicates clearly that its decision is based squarely on the proposition that the agreement with the Red Lake Indians alone was to be looked to in determining whether the excess lands included within the vast area reserved for allotments at Red Lake were in fact ceded. Thus the court said (R. 98):

"The ultimate question in the case is whether the reservations made *in the agreement with the Red Lake Indians*, by virtue of the provisions of the Act, also conveyed the part reserved." (Italics ours.)

The Court further held (R. 98), that Section 1 of the Act of 1889 "clearly implied that the consent of all of the different bands was necessary to put the agreements made with the Indian bands, and each of them, in force". From this and other similar statements appearing in the opinion, we understand the court to mean that in order to effect a cession of the Red Lake Reservation it was necessary to obtain, not only the consent of two-thirds of the male adults of all the Indians, but also two-thirds of the membership of each

band, including the Red Lake Band, and that in consequence the cession was no broader than that embraced in the Red Lake agreement.

The Court further held (R. 101) that the Red Lake agreement was so far ambiguous as to permit resort to the minutes of the verbal negotiations with the Red Lake Indians alone which preceded its execution in order to determine the extent of the cession of the Red Lake Reservation effected under the Act of 1889, and that, notwithstanding the plain and explicit references in the agreements of cession to the Act of January 14, 1889, and the plain command of that Act that allotments should be made in compliance with the General Allotment Act of 1887, those Acts formed no part of the agreements, and allotments to the Red Lake Indians were not required thereunder.

Basing its conclusion upon the language of the Red Lake agreement, and the verbal negotiations which lead up to it, the court concluded (R. 103) that:

> "We think it should be held that the lands reserved in the agreement of 1889 made by the Red Lake Indians were not ceded to the government."

In consequence, the Court having found that no part of the area set aside for allotments at Red Lake was ceded under the Act of January 14, 1889, necessarily concluded that plaintiffs, the beneficiaries of the trust created under that Act, acquired no right or interest therein, and in consequence, sustained no damage when the entire area was diverted to the exclusive benefit of the Red Lake Band under the Act of February 20, 1904. For these reasons the court made its conclusion of law that plaintiffs were not entitled to recover and that the petition should be dismissed (R. 113). It is respectfully submitted that an examination of the Act of January 14, 1889 and the agreements entered into

thereunder demonstrates that the court erred in these conclusions.

The Act of January 14, 1889 (R. 55-62), contained detailed instructions with perfect limitations for everything to be done thereunder. The cessions to be made were a part of the plan clearly set forth in the Act, and were to be evidenced by written agreements. The President was vested with the sole authority to determine whether the written agreements conformed in all respects with the requirements of the Act. The agreements were made and executed by the Indians (F. 16, R. 66), and were transmitted to the President, accompanied by the minutes of the council meetings and the report of the Commission and the Secretary of the Interior thereon (Fs. 20, 21, R. 68-9). The President on March 4, 1890, with the entire record before him noted his approval on each agreement, which finally set at rest and removed from consideration by any court any question as to whether a complete cession had been made of the Indian title in accordance with every provision of the Act of January 14, 1889 (*United States* v. *The State of Minnesota*, 270 U. S. 181, at 201-3, and cases therein cited).

That the Act was expressly made a part of each agreement appears from the written instruments. The agreement with the Red Lake Band (R. 66), like each of the other nine agreements (R. 67), recited:

> "We, the undersigned, being male adult Indians over eighteen years of age • • • do hereby certify and declare that we have heard, read, interpreted, and thoroughly explained to our understanding, the act of Congress approved January 14, 1889, entitled • • •, which said act is embodied in the foregoing instrument, and after such explanation and understanding, have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act, and each and all of the provisions thereof • • •."

In *United States* v. *Mille Lac Band*, 229 U. S. 498, it was claimed by the Indians that they did not understand the Act of January 14, 1889, when the agreements were made, and this Court (at pp. 507-8), said:

> "True, it is said on behalf of the Indians that they did not so understand the act; that is, did not understand that existing entries could be thus carried to patent. But of this it is enough to observe that the language of the proviso to section 6 is plain and unambiguous; that the agreement recites that the Mille Lacs 'do hereby accept and consent to and ratify the said act, and each and all of the provisions thereof;' *and that the Indians, no less than the United States are bound by the plain import of the language of the act and agreement.*" (Italics ours.)

In view of this decision, we submit that the resort by the court below to the minutes of the meetings at which the agreement with the Red Lake Indians was negotiated to determine whether those Indians assented to the Act of January 14, 1889, or the General Allotment Act of February 8, 1887, the extent of the cession, the purpose for which the lands were reserved, and the ownership of the reserved lands, instead of looking to the plain language of the Act of January 14, 1889, and the agreements, appears too plain to admit of doubt.

Section 1 of the Act of January 14, 1889 (F. 10, R. 56), directed the Commissioners to secure a cession "of all and so much of" the Red Lake Reservation "as in the judgment of said Commission *is not required to make and fill the allotments required by this and existing acts*, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated:". Section 1 further directed that the cession of the Red Lake lands "*shall be deemed sufficient if made and assented to* • • • *by two-thirds of the male adults of all the Chippewa*

Indians in Minnesota," "and the acceptance and approval of such cession and relinquishment by the President of the United States shall be deemed full and ample proof of the assent of the Indians, and *shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided.*" (Italics ours.)

Preliminary to obtaining the cession (Sec. 1, R. 56-7), and for the purpose of ascertaining whether the proper number of Indians assented thereto *and for the purpose of making the allotments*, the Commissioners were directed to

> "make an accurate census of each tribe or band, classifying them into male and female adults, male and female minors; and the minors into those who are orphans and those who are not orphans, giving the exact number of each class."

Section 3 (R. 57), directed that allotments of land *in conformity with the Act of February 8, 1887* should be made the Red Lake Indians on the Red Lake Reservation "*as soon as practicable*" after the completion of the census and the cessions had been obtained, approved and ratified. The words, "in conformity with the Act of February 8, 1887," had relation only to the character and quantity of, and trust title to, the allotments to be made, which were to conform in these respects to the requirements of the Act of 1887. The Act of 1887 referred to (*supra*, p. 12; F. 12, R. 63), fixed the quantity of land chiefly advantageous for agriculture to be allotted each member of each class shown by the census (*supra*, p. 20; F. 12, R. 63), and in the event any Indian entitled to an allotment failed for four years to select land, it authorized the selection of such land for, and allotment to, such Indian.

Preliminary to negotiating the agreement with the Red Lake Indians, the Commissioners, obedient to the instruc-

tions contained in said Act, took the census (F. 19, R. 68), which disclosed (*supra*, p. 20) the total number of Indians residing on the Red Lake Reservation to be 1,168, classified (H. R. Ex. Doc. 247, 51st Cong. 1st Sess., p. 9), as follows: male adults, 303, female adults, 359; male minors, 237; female minors, 247; male orphans, 15; female orphans, 7. The Commissioners therefore knew when they negotiated the agreement with the Red Lake Indians that if all the allotments to be made on the Red Lake Reservation were made of "agricultural lands" it would require approximately 73,980 acres.

During the course of the negotiations, the Commissioners had received written instructions (F. 13, R. 63-4), from the Commissioner of Indian Affairs, approved by the Secretary of the Interior, that the boundaries of the tracts reserved out of which the allotments were to be made "must be definitely determined and accurately described." They knew that the cession at Red Lake was to be made by two-thirds of all the male adult members of all the Indians, and from the census that the total number of male adults of all the bands was 2,178, of which 386—or less than one-fifth—were members of the Red Lake and Pembina Bands (F. 19, R. 68). For reasons which will hereinafter appear, the Commissioners, in an attempt to comply with both the requirements of the Act, and the instructions of the Commissioner of Indian Affairs, made a temporary withdrawal of more than six times the acreage that would be actually required to make allotments to the approximately 1,168 Indians.

The agreement negotiated with the Red Lake Band (F. 16, R. 66), is as follows:

> "We, the undersigned, being male adult Indians over eighteen years of age, of the tribes or bands of Chippewa Indians occupying and belonging to the Red

Lake Reservation, in the State of Minnesota, *do hereby certify and declare that we have heard read, interpreted and thoroughly explained to our understanding, the Act of Congress approved January 14, 1889*, entitled 'An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota' (Public No. 13), *which said act is embodied in the foregoing instrument, and after such explanation and understanding, have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify said act, and each and all of the provisions thereof,* and do hereby grant, cede, relinquish, and convey to the United States all our right, title and interest in and to all and so much of said Red Lake Reservation as is not embraced in the following described boundaries, to-wit:

(Then follows a description by metes and bounds of 661,118 acres, F. 20, R. 69).

"• • • *for the purposes and upon the terms stated in said Act, which said lands embraced within the foregoing boundaries have been reserved* by the Commissioners appointed under said act and as therein authorized *for the purpose of making and filling the allotments therein provided for.*" (Italics ours.)

This agreement was signed by 247 of the 303 male adult members of the Red Lake Band (F. 19, R. 68; H. R. Ex. Doc. 247, 51st Cong., 1st Sess., p. 9).

An identical agreement was made with the Pembina Band residing on the White Earth Reservation (F. 16, R. 67), which was signed by 77 of the 83 male adults of that band (F. 19, R. 68; H. R. Ex. Doc. 247, 51st Cong., 1st Sess., p. 9).

By these two agreements 661,118 acres were described as reserved by the Commissioners *"for the purpose of making and filling the allotments" to the Red Lake Indians authorized by the Act.*

The Commissioners then negotiated eight additional separate agreements (Fs. 17, 18, R. 67), with the remaining eleven bands. These eight agreements, in so far as they related to the Act and the cession of the lands at Red Lake differed from the agreements with the Red Lake and Pembina Bands in the following respects only: the agreement with the White Earth Band set forth the Act in its entirety; none contained any description of the lands reserved at Red Lake, but each contained an identical provision of cession of the lands at Red Lake as follows:

> "and we do also hereby cede and relinquish to the United States all our right, title and interest in and to all and so much of the Red Lake Reservation *as is not required and reserved under the provisions of said act*, to make and fill the allotments to the Red Lake Indians in the quantity and manner as therein provided." (Italics ours.)

These eight agreements were executed by 1,560 of the 1,792 male adult members of the eleven bands (F. 19, R. 68, H. R. Ex. Doc. 247, 51 Congress, 1st Sess., p. 9), which constituted more than two-thirds of all the male adult members of the Chippewas in Minnesota, the total number of all the male adults being 2,178.

These eight agreements, signed by more than the required number of all adult male members ceded "all and so much of the Red Lake Reservation *as is not required and reserved under the provisions of said Act, to make and fill the allotments to the Red Lake Indians in quantity and manner as therein provided.*" Thus all lands were ceded that were not both (1), *required*, and (2), *reserved*, under the provisions of said act to make the allotments. The only lands complying with both requirements, and the only lands authorized to be reserved from the cession "*under the provisions of said act*" were, so much of the lands

within the withdrawn area as were required to make the allotments. All other lands were ceded in obedience to the express directions contained in the Act.

The Commissioners, having completed the census and the agreements, on December 26, 1889 (F. 20, R. 68), transmitted the same, together with the minutes of the meetings at which the agreements were negotiated, and the report of their transactions in connection therewith, through the Commissioner of Indian Affairs, to the Secretary of the Interior. In said report the Commissioners called particular attention to the agreement with the Red Lake Indians (R. 68-9), as follows:

> "• • • but they (The Red Lake Chippewas) did not like the provision for providing (dividing) with other bands, although when it was explained to them that the country from Lake Superior to and beyond the Red River of the North, was, by the united efforts of all the Chippewas, taken by conquest from the Sioux and that had it not been for such united efforts, they could not have taken or held the Red Lake Reservation; they admitted the correctness of this statement, but thought some of their neighbors had received more than their due proportion of annuities from former sales.
>
> "• • • The Chippewas of this State did unquestionably, in early times, hold their lands in common. It was so in 1825, at the time of the treaty at Prairie du Chien, and no other idea would ever have been entertained had not the mistaken policy of purchasing a tract here and there from the bands contiguous thereto been adopted. Of the vast cessions heretofore made, there is little, and in many cases nothing, left to show any benefit derived by the Indians therefrom.
>
> • • • • • • •
>
> "The Red Lake Reservation, *which they cede to the United States, contains 3,260,000 acres.* The number of Indians occupying the same is 1,168,

"The boundaries of the diminished reservation, *from which allotments* to the Red Lake Chippewas are to be made, are as follows:

(Then follows a description of the Red Lake diminished reservation, which description departs in language and somewhat in essence from the description appearing in the Red Lake agreement.)

"*This is larger than they will eventually require, but* as there are swamps and other untillable lands therein, *it cannot be reduced until after survey and allotment shall be made.*" (Italics ours.)

The total area of the diminished Red Lake Reservation as described in the aforesaid agreements with the Red Lake and Pembina Bands was 661,118 acres.

This report is important as it shows the situation which confronted the Commissioners, and which caused them to effect the excessive withdrawal, with the right reserved to the Red Lake Indians to select their allotments out of the lands within the defined area, after which the reserved area was to be "reduced," and, i. e., the remaining unallotted lands within the defined area released from the withdrawal. This was a compliance with the directions contained in the Act—to reserve only such lands as in their judgment was necessary to make the allotments—which the Commissioners were not at liberty to disregard, and also complied with the instructions of the Commissioner of Indian Affairs "to definitely determine and accurately describe the boundaries" of the reserved lands from which the allotments were to be made.

On January 30, 1890 (F. 21, R. 69), the Secretary of Interior transmitted the entire record (H. R. Ex. Doc. 247, 51st Cong., 1st Sess.), together with his report thereon, to the

President. In his report (R. 69), the Secretary advised the President, in part, as follows:

> "• • • The Red Lake Reservations, two-thirds of which at least is ceded to the United States, contains 3,200,000 acres, and the number of Indians occupying it is 1,168. The boundaries of the diminished reservation, from which allotments to the Red Lake Chippewas are to be made, are given in the report. The commissioners report that—
>
> " 'This reservation is larger than will eventually be required, but as there is swamps and other untillable lands therein, it cannot be reduced until after survey and allotments shall be made.'
>
> "Whether the surplus lands that may remain after allotments shall have been completed as required by the law, can be disposed of without further legislation is a question which will require consideration, but such consideration is not necessary at this time."

In this report the excessive withdrawal is admitted, and its ultimate reduction by disposal of the surplus lands, presumably under the Act of 1889 is discussed, and the only doubt expressed is whether additional legislation might be necessary to dispose of the surplus lands.

On March 4, 1890, the President affixed his approval to each of the ten agreements (F. 22, R. 70), and in a message to Congress of even date (R. 71), he stated, in part, as follows:

> "Being satisfied from an examination of the papers submitted that the cession and relinquishment by said Chippewa Indians of their title and interest in the lands specified and described in the agreement with the different bands or tribes of Chippewa Indians in the State of Minnesota was obtained in the manner prescribed in the first section of said Act, and that more than the requisite number have signed said agreement,

I have, as provided by said Act, approved the said instruments in writing constituting the agreement entered into by the commissioners with said Indians."

It is respectfully submitted that the net result of all of the transactions above stated was the cession to the United States of the entire Red Lake Reservation in trust for all the Chippewa Indians of Minnesota, except such lands within the area reserved by the commissioners for allotments, as would have been required to make and fill the allotments to the Red Lake Indians as in said Act provided. The contrary conclusion arrived at by the Court of Claims, to the effect that the entire 661,000 acres reserved for allotments at Red Lake remained the exclusive property of 1,168 Indians, does violence to the obvious purpose of Congress as expressed in the Act of January 14, 1889, and, as evidenced by the reports of its committees; ignores the plain language of the agreements of cession negotiated with the Indians other than those at Red Lake (which excepted from the cession only lands which were both (1) *reserved*, and (2) *required* to make and fill the allotments); and ignores the plain language of the Red Lake agreement itself, insofar as that agreement recited that the excepted lands had been reserved, not for the exclusive benefit of the Red Lake Indians, but *solely for the purpose of effecting the allotments provided for in the Act.*

As has been stated, under the express provisions of Section 1 of the Act, the Commissioners were instructed to negotiate for the cession of all Chippewa lands in Minnesota except so much of the White Earth and Red Lake reservations "as in the judgment of the Commission is not required to make and fill the allotments required by this and existing acts". Congress could not have more clearly stated its intention that all Indian lands except those actually utilized for allotments should be ceded by the agree-

ments and that *all tribal ownership in common should be terminated.* The directions contained in the act are so free from ambiguity that there is no room for construction—*U. S.* v. *Missouri Pacific P. R. Co.*, 278 U. S. 269, Syl. 2. If, however, it should be contended that there is any ambiguity in the language of the Act itself in this regard, reference may be had to the report of the Committee of the House of Representatives reporting the bill which became the Act of January 14, 1889. In that report, the committee considered certain prior tentative agreements under which an area of approximately 800,000 acres would have been left in the exclusive common ownership of the Red Lake Band. As a reason for not approving these agreements the committee said (R. 53-4):

> "The Red Lake agreement is also open to serious objection in perpetuating forever the tribal evolution of those 1,100 Red Lake Indians, by giving them in perpetuity a tribal fee title to a cool million acres of agricultural lands, less the individual allotments, which could not well exceed 160,000 acres of land. This seems the height of prodigality, to first give each of these Indians a farm and then give the whole band—only 1,100 of them—over 800,000 acres in common in fee forever.
>
> "It is now conceded on all hands that the only safe and practical way to civilize the Indians is by alloting lands in severalty to them—*breaking up their tribal relations and ownership in common,* and putting them to work as individuals on their several allotments. Not only does the Red Lake agreement do violence to these views, *but it seems particularly calculated to build up an Indian land monopoly and oligarchy,* more than that which now exists among some of the so-called civilized tribes in Indian Territory."

The Committee further said (R. 55):

> "In brief, the bill, if accepted by the Indians, aims to break up their tribal relations and make them full

citizens, *to allot ample land to each of them in severalty, to dispose of the residue of the lands*—the pine lands for the highest possible figure, the agricultural lands at $1 per acre to actual settlers under the homestead laws—and to give all the Indians the entire benefit of the proceeds of the lands, less the necessary expense attending their survey, appraisal and disposal." (Italics ours.)

It will be noted that the construction placed upon this bill, and the agreements, by the defendant, and sustained by the court below, created exactly the "Indian land monopoly and oligarchy" in the Red Lake Band which Congress found objectionable in the former agreements, the only difference being that the area here involved is 660,000 acres instead of 800,000 acres under the former plan.

The report of the Commissioners above quoted shows that they knew that the area reserved at Red Lake was greater than would be required for allotments, and would have to be ultimately reduced. If the agreements as a whole are interpreted as effecting a permanent and complete exception of this area from the cession, the acts of the Commissioners in effecting such a reservation were, of course, a plain violation of the mandate of Section 1 of the Act that they negotiate for a cession of all and so much of the lands as in their judgment "is not required to make and fill the allotments required by this and existing acts."

However, the Commissioners obviously intended no such permanent reservation, and attempted to comply to the best of their ability both with the requirement of the act that only such lands be reserved as should be required to fill the allotments, and with the instructions from the Secretary of the Interior that the allotment areas be specifically defined.

Being unable to find any compact body of land on the Red Lake Reservation containing only land suitable for al-

lotments and embracing only the approximate acreage which would have been consumed in making allotments to the Red Lake Indians, they were faced with a situation where a literal compliance both with the instruction contained in Section 1 of the Act (to reserve only enough land to fill the allotments), and with the instructions of the Secretary (to definitely set forth the boundaries of the reserved area), would work inevitable injustice to the Indians to be allotted.

Confronted with this situation, the Commission adopted an ingenious expedient, but in so doing sowed the seeds of 40 years of controversy which has culminated in this suit.

By the terms of the agreement signed by the Red Lake and Pembina Indians, the Commissioners withdrew, and excepted from the cession by these bands, a tract, described by metes and bounds, containing 661,118 acres of land (substantially more than six times the maximum amount which the Commissioners knew would be required for allotments), but at the same time embodied in the agreement an acceptance of the act of 1889 and all its provisions, and carefully indicated the limited purpose, and consequent temporary nature, of the exception and withdrawal, by expressly reciting, in said instrument (R. 66), that said lands were:

> "Reserved by the Commissioners appointed under said act as therein authorized for the purpose of making and filling the allotments therein provided for."

Having in mind the provisions of the act of January 14, 1889, to the effect that, as to the Red Lake Reservation, "the cessions and relinquishments shall be deemed sufficient if made and assented to by two-thirds of the male adults of all the Chippewa Indians in Minnesota" (R. 56), the Commissioners proceeded, in the eight agreements signed by the male adults of the other eleven bands, to make certain that there was in fact a cession of all lands

on the Red Lake Reservation not ultimately actually required for allotment. This they accomplished by including in each such subsequent agreement a cession by each signatory band of:

> "So much of the Red Lake Reservation as is not *required and reserved* under the provisions of said act to make and fill the allotments to the Red Lake Indians in quantity and manner as therein provided" (R. 68).'

It is to be noted that by this language all lands included in the Red Lake Reservation are ceded which are not *both* (1), required to fill the allotments provided for, and (2), reserved under the provisions of said act for that purpose. The only lands complying with both requirements, and the only lands which were authorized to be reserved "under the provisions of this act", were so much of the land within the withdrawn area as was required to complete the allotments. All other lands at Red Lake were expressly ceded by these eight agreements.

Since these agreements with the Indians, other than those of the Red Lake and Pembina bands, were actually signed by 1,560 out of a total of 2,178 male adult Chippewas in Minnesota (R. 68), *i.e.*, by more than two-thirds of the total, these eight agreements, standing alone, complied fully with the requirement of Section 1 of the Act of 1889, and effected a sufficient and complete cession of all of the Red Lake lands not actually required to make and fill the allotments to the Red Lake Indians. This result is attained without depending at all upon the assent of the signers of the Red Lake or Pembina agreements (although all male adults of those bands are included in the total of 2,178).

The fact that the Red Lake and Pembina Indians also executed agreements of cession which are claimed by defendant to be more limited in their effect, does not qualify or restrict in any manner the cession effected by the other

Indians. So far as appears, the terms of the Red Lake and Pembina agreements, and the vast reservation of 661,118 acres therein defined, were never assented to by any Indians other than the 324 members of Red Lake and Pembina Bands who signed the same.

By attaching paramount importance to the terms of the Red Lake and Pembina agreements and disregarding almost completely the agreements with the other bands which in fact effected the cession at Red Lake, the Court below committed at the outset fundamental error as to the major issue which led inevitably to a wrong result. The ultimate question for determination is not the extent of the cession effected by the Red Lake and Pembina agreements, whereby a defined area six times as large as required, was described as "reserved by the Commissioners appointed under said Act, for the purpose of making and filling the allotments therein provided for." The question is the extent of the cession of Red Lake lands effected by the eight agreements with the other eleven bands, all of which expressly and clearly ceded "so much of the Red Lake Reservation as is not *required* and reserved under the provisions of said Act to make and fill the allotments to the Red Lake Indians therein provided for."

By this language it was, of course, intended to except from the cession enough land to complete the allotments to which the Red Lake Indians were entitled under the provisions of the Act of 1889, but the use of the word "required" definitely restricted the lands so excepted to those *necessary to fill these allotments.* The words "and reserved" further restricted the lands excepted from the cession, to lands thus actually required for allotments *and also situated within the reserved area.* The obvious purpose of this further restriction of the lands excepted from cession was to make it clear that lands outside the reserved areas were not available for allotments, and hence could be im-

mediately sold and disposed of under the Act. While the surplus ceded lands within the reserved area could not be identified until the allotments were made, and hence were not available for disposal until this had been done, the Act of 1889 expressly provided that the allotments should be made "as soon as practicable," and this offered no great difficulty.

We submit that this is the only interpretation of the agreements executed by the bands (other than Red Lake and Pembina), and under which the Red Lake Reservation was ceded, which is consistent with the express language of those agreements, and the only interpretation consistent with the obvious purpose and intent of the Act of January 14, 1889 (which was expressly accepted and approved by, and made an integral part of, all the agreements), to *break up all tribal common ownership.*

In a number of cases the Act of January 14, 1889, and the agreements entered into thereunder have come before this Court for consideration. In several of these cases this Court carefully reviewed the provisions of the Act and the agreements, and in every instance recognized that the plain meaning and intent of the Act and agreements was to effect a cession of the entire Chippewa title to *all lands not actually required for allotment.*

In *Minnesota* v. *Hitchcock*, 185 U. S. 373, after a careful and painstaking review of the history of Chippewa titles, and a detailed analysis of said act and agreements, said:

> "The cession was not to the United States absolutely, but in trust. *It was a cession of all* the unallotted lands. * * *"
>
> "Now it is contended that this legislation, *though dealing with, in terms, all the unallotted lands,* is subordinated to the prior promise of the government to grant sections 16 and 36 to the state for school purposes.

> "*The cession was, as we have seen, of all the unallotted lands,* and the cession was of those lands 'for the purposes and upon the terms hereinafter stated.' It was a distinct conveyance by the Indians of certain lands for a named purpose. Now if the United States, the recipient of this cession, was competent to carry into execution the expressed purposes, *does it not follow that the cession subjected all the lands to them?*"

In *United States* v. *Mille Lqc Band*, 229 U. S. 498, after discussing the prior treaties and negotiations with the Chippewas, the Court again carefully considered the effect of the Act of January 14, 1889, and reaffirmed the conclusion reached in *Minnesota* v. *Hitchcock* that all lands not required to fill the allotments were ceded by the 1889 agreements. The court said (italics ours):

> "That legislation came in the Act of 1889. It provided for a commission to negotiate with all the bands of Chippewas in Minnesota for the cession and relinquishment of all their reservations, excepting the White Earth and Red Lake Reservations, *and for the cession and relinquishment of so much of them as should not be required for allotments.* It further provided that the cession and relinquishment should be obtained as to each reservation, other than the Red Lake, through the assent in writing of two-thirds of the male adults of the band 'occupying and belonging to' it, and, as to the Red Lake Reservation, through a like assent of two-thirds of the male adults of all the Chippewas in the State; that the cession and relinquishment as to each reservation should be subject to the approval of the President, and when approved should operate *as a complete extinguishment of the Indian title* 'for the purposes and upon the terms' stated in the Act."

At page 508 (229 U. S.) this Court said with reference to the binding force and effect of the Act and the agreements:

> "• • • the Indians, no less than the United States, are bound by the plain import of the language of the act and the agreements."

The prior interpretation by this Court of the act and agreements, became an integral part of the Act and agreements, and was binding on the court below—*Gulf C. & S. F. R. Co.* v. *Moser*, 275 U. S. 133, Syl. 2. The lower court, however, considered and treated the interpretation of said Act and agreements by this Court as *obiter dicta* (Op. R. 109-10).

It therefore appears plain that all lands on the Red Lake Reservation, except enough to make and fill the allotments to the Red Lake Indians in the quantity, of the character, and at the time, specified in the Act, were ceded by the agreements. That all ceded lands were to be sold and disposed of, as in the Act provided, and the proceeds deposited in the trust fund to the credit of plaintiffs, is too plain to admit of doubt. The ruling of the Court below that the land in suit was not ceded by the Act and the agreements, but was and remained the exclusive property of the Red Lake Indians, is too obviously erroneous to require further discussion.

Later Withdrawal of Lands Outside Original Withdrawn Area.

In addition to the 661,118 acres included within the boundaries of the temporary withdrawal, as described in the agreement with the Red Lake Indians (F. 20, R. 69), defendant's President, on the recommendation of the former Chairman of the Chippewa Commission, by executive order dated November 21, 1892, withdrew 2,303 acres of the lands expressly ceded by the Act of 1889 and the agreements (F. 24, R. 72-3), and added them to the withdrawal on the Red Lake Reservation, the authority for which nowhere appears, and the validity of which is expressly challenged (Pet., par. 5, R. 14). The reason assigned for this withdrawal is that they were mistakenly omitted by the Com-

mission from the original temporary withdrawal. Whether they were omitted by mistake or otherwise, there was no statutory or other authority for correction through an executive order, as these lands had theretofore been expressly ceded. As to these 2,303 acres dealt with by the Act of February 20, 1904, there can be no question as to plaintiff's rights therein.

Wrongful Taking under Act of February 20, 1904

Fourteen years after the agreements became absolute (F. 22, R. 70-1), and in disregard of the express instructions contained therein (F. 10, R. 57, Sec. 3; Fs. 16-18, R. 66-7; *La Roque* v. *United States*, 239 U. S. 62, 65-6), no allotments had been made on the Red Lake Reservation (F. 25, R. 73). By Act approved February 20, 1904 (F. 29, R. 76, 80-1), Congress directed the sale of that part of said temporarily withdrawn lands on the Red Lake Reservation lying westwardly of the range line between ranges 38 and 39 west of the fifth principal meridian, comprising 256,152 acres, and the payment of the net proceeds received therefrom in annual per capita payments *solely to the Indians belonging on the Red Lake Reservation.* The Act further provided that the Indians on the Red Lake Reservation should possess their diminished reservation *independently of all other bands of the Chippewa Tribe of Indians*, and that nothing contained in said Act *should be so construed as to deprive the Indians on the Red Lake Reservation of any benefits to which they were entitled under existing treaties* or agreements not inconsistent with the provisions of said Act.

The Act of February 20, 1904, dealt with not only the 661,118 acres included within the boundaries of the original temporary withdrawal as described in the agreement with the Red Lake Indians, but also with the 2,303 acres of ceded

lands added to the temporary withdrawal by the executi order.

The Court below held that all the lands dealt with by the Act of February 20, 1904, were, at the date of said Act and at all times prior thereto, the exclusive property of the Red Lake Band and that defendant so treated and dealt with them (Op. R. 104); and, therefore, there was no taking by the Act of February 20, 1904, of any property in which appellants had any interest, and accordingly they had sustained no loss.

This last conclusion of the Court below is based upon its prior conclusions (1), that at and prior to January 14, 1889, the Red Lake Indians were the exclusive owners of the lands in suit; and (2), that there was no cession by the Act of 1889 and the agreements of any of the lands in suit, which continued to remain the exclusive property of the Red Lake Indians, the error of each of which we have hereinbefore pointed out (*supra*, pp. 39-59), and need not be here again repeated.

The Court below further held (Op. R. 106), that defendant, in the Act of February 20, 1904, dealt with the Red Lake Indians as the exclusive owners of the land in suit, basing this conclusion upon the minutes of the negotiations which resulted in an inchoate agreement (R. 106-7), isolated extracts from said minutes having been included in the record (F. 27, R. 75), over objection of appellants.

The Act of February 20, 1904, had its inception (F. 27, R. 74) in a letter dated January 30, 1902, addressed to the Secretary of the Interior from the mayor of Thief River Falls requesting that the western portion of the lands in suit be opened to entry under the homestead laws of the United States, and the proceeds received therefrom paid to the Red Lake Indians. An Act approved March 3, 1901 (R. 75), authorized the Secretary of the Interior to nego-

tiate agreements "*with any Indians* for the cession to the United States of portions of *their respective reservations or surplus* unallotted lands." As hereinbefore pointed out, all the lands within the withdrawal at Red Lake, except enough to make and fill the allotments to the Red Lake Indians, had been ceded to the United States, impressed with the trust set forth in the Act of 1889 and the agreements, but the then Secretary of the Interior, evidently without proper inquiry into the situation, on February 10, 1902, despatched an Indian inspector to Minnesota to negotiate an agreement with the Red Lake Band for the cession of the lands as requested in the letter of the mayor of Thief River Falls (R. 75). The negotiations that followed resulted in an inchoate agreement (R. 75), but which was never ratified (F. 28, R. 76). The inchoate agreement, in amended form, was included in the Act of March 3, 1903, with a provision that it should not become effective unless ratified by a majority of the male adults of the Red Lake and Pembina Bands (R. 76). The Indians never ratified the agreement. Thereupon Congress passed the Act of February 20, 1904.

The Act of February 20, 1904 (F. 29, R. 76, 81-2), clearly recognized that the lands therein dealt with had been disposed of by the Act of January 14, 1889, and the agreements, as will appear from the following provisions of the Act (R. 81):

> "It is further agreed that the said Indians belonging on the said Red Lake Indian Reservation, Minnesota, *shall possess their diminished reservation independent of all other bands of the Chippewa tribe of Indians* * * *."
>
> "*It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging on the Red Lake Indian Reservation, Minnesota,*

of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement." (Italics ours.)

The first provision (above quoted) was a recognition of the outstanding rights or claims in all the other bands of Chippewa Indians to the lands within the "diminished reservation"—the title to which defendant then held as Trustee, impressed with the trust created by the Act of 1889 and the agreements—and a declaration that thereafter the Red Lake Indians alone should be possessed of said lands, "independent of all other bands of the Chippewa Tribe of Indians"; with a further declaration (second provision above quoted) that the conferring of the exclusive title upon the Red Lake Band should not operate to deprive them of any "benefits to which they were entitled" under the Act of 1889 and the agreements. It thus appears plain that the Act of February 20, 1904, on its face recognized an outstanding claim to the lands therein disposed of in all the Chippewa Indians of Minnesota.

The court below (Op. R. 108) rejected this contention of appellants, saying:

> "Counsel for defendant insist that article IV constituted a recognition of the outstanding claim. On the contrary, when we consider the situation and the negotiations which led to the agreement, it becomes very plain why this provision was inserted in the agreement. The Red Lake Indians had heretofore ceded a very large body of land to the Government and it was explicitly understood at the time the cession was made that the diminished reservation should be theirs alone. Now they were called upon to make an additional cession, and what was said at the time of the negotiations shows that the Indians wanted this to be final and the last time they should be called upon to make any cessions."

Here again the Court adhered to its previous error, hereinbefore pointed out, with reference to the title to the reserved lands at Red Lake under the Act of 1889 and the agreements; and further erred in failing to take into consideration all that was said in the negotiations leading up to the inchoate agreement, and selecting therefrom only a few isolated sentences. If resort could properly have been made to the minutes of the negotiations, the entire minutes should have been considered. They appear in House Ex. Doc. No. 532, 57th Congress, 1st Session, and of which this Court is requested to take judicial notice, notwithstanding the refusal of the court below to either omit from its findings any reference thereto, or to include in its findings certain portions of said minutes hereinafter set out. The proposition submitted by the Inspector to the Red Lake Indians during the course of the negotiations is stated in the House Document at pp. 13-16, as follows:

> "The cession of the western portion of your reservation is an independent proposition and entirely different from what your last agreement was. This is something in which you people of Red Lake Agency alone have any interest; that is, *provided you take advantage of my presence here and my readiness to meet you on common grounds and a fair proposition, and you don't want to keep your ear closed so as not to hear what I am going to say.* You have an opportunity now to protect yourselves in a way that there are no other Indians in the country that can be better protected. *Your agreement of 1889 does not protect you as a tribe and as an agency fully. There has been a certain tract of land described, and certain boundary lines within which you may take allotments, and under that agreement,* which this book contains (indicating), *the Government could at any time order allotments made to you, and all the surplus lands would be declared open for settlement under the same conditions that your other ceded lands are;* that is, the pine-land portions that were ap-

praised and sold for less than their appraised value, and the agricultural land opened to settlement under the homestead acts at $1.25 per acre.

"*I am in a position at this time,* having been sent here by the Secretary of the Interior, *to negotiate with you, to make a bargain that will protect you and establish your undisputed right to the possession of this reservation,* and no other Indians would have rights to the proceeds of this reservation but yourselves, *while under the Act of 1889 the surplus lands of this reservation, not required for allotments for yourselves and your families may be thrown open to settlement, in which case every Chippewa Indian of Minnesota would have a share of the proceeds arising therefrom.* In case we conclude the agreement that we are talking about for this tract of land of 256,152 acres, all of the proceeds of that tract goes entirely to the Indians of the Red Lake Agency. It would be so provided in the agreement. Another clause will provide that the remaining portion, after that is ceded, will belong to the Indians of the Red Lake Agency alone. You can see the way your lands have gone and the proceeds of the lands you have ceded. There are too many persons of different agencies interested in it. Your present condition is unsatisfactory and tenure uncertain." (Italics ours.)

Thus if the minutes of the negotiations leading up to the inchoate agreement could properly be considered in interpreting the Act, the court below failed to include in its findings the material portions of the minutes, which abundantly sustained appellants' contention with reference to the intent and purpose of the Act of February 20, 1904.

The Court further says (Op., R. 108):

"In the same manner Congress recognized the sole right of the Red Lake Indians to their reservation by passing a number of acts relating to this reservation and the proceeds of the sale of lands therefrom subsequent to the act of 1889."

For the particular Acts the court below merely refers to its finding 34 (R. 83-5). An examination of that finding fails to provide any basis for the above statement. Only one of the Acts—Act of April 14, 1896—was passed subsequent to January 14, 1889, and prior to February 20, 1904. The obvious reason for the inclusion in that Act (R. 83) of the provision, viz: "that • • • this Act shall not apply to the Red Lake Reservation until the consent of the Red Lake Indians shall be obtained thereto," was that Congress did not intend to permit a grant of a railroad right-of-way though the lands reserved for the selection of allotments without the consent of the Indians who were to take their allotments therefrom. There is no claim that the compensation for the right-of-way was to be paid to the Red Lake Indians. The provision in the Act of March 3, 1903, cited, never took effect, and culminated in the Act of February 20, 1904, as hereinbefore pointed out.

All the other acts cited in finding 34 were passed subsequent to February 20, 1904, and after the disposal and taking complained of had been fully effected. Clearly they formed no basis for a construction of the title to the lands in suit under the Act of 1889 and the agreements at or prior to the Act of February 20, 1904. The inclusion of this finding in the record was objected to in the court below and assigned as error here, Assignment of Error VII.

It is apparently conceded by the court below that if the Act of 1889 and the agreements ceded all lands within the temporary withdrawal not required to make and fill the allotments to the Red Lake Indians, as appellants contend, the Act of February 20, 1904, effectually took and disposed of appellants' interests in the surplus lands, for which they were entitled to recover. As to the 2,303 acres covered by the Executive Order, there can be no question that they were ceded by the Act of 1889 and the agreements, and it appears equally clear that all the other lands, except enough

to make the allotments to the Red Lake Indians were likewise ceded.

This Court, in a situation strikingly similar (*U. S.* v. *Mille Lac Band*, 229 U. S. 498 at 509-10), said:

> "As before stated, the lands not within the proviso were disposed of, not under the Act of 1889, but under the general land laws; not for the benefit of the Indians, but in disregard of their rights. That was clearly in violation of the trust before described, and the Indians are entitled to recover for the resulting loss. *In principle it is as if the lands had been disposed of conformably to the Act of 1889, and the net proceeds placed in the trust fund created by Sec. 7, and the Government then had used the money, not for the benefit of the Indians, but for some wholly different purpose. That the wrongful disposal was in obedience to directions given in two resolutions of Congress does not make it any the less a violation of the trust.* The resolutions, unlike the legislation sustained in *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294, 307, 47 L. Ed. 183, 190, 23 Sup. Ct. Rep. 115, and *Lone Wolf* v. *Hitchcock*, 187 U. S. 552, 564, 568, 47 L. Ed. 299, 305, 307, 23 Sup. Ct. Rep. 216, were not adopted in the exercise of the administrative power of Congress over the property and affairs of dependent Indian wards, but were intended to assert, and did assert, an unqualified power of disposal over the lands as the absolute property of the Government. Doubtless this was because there was a misapprehension of the true relation of the Government to the lands, but that does not alter the result." (Italics ours.)

See also *United States* v. *Creek Nation*, 295 U. S. 103 at 109-10.

The Damages Recoverable.

The Court further found as a fact (F. 31, R. 82) that defendant received from the disposal of 256,152 acres of land in suit, the sum of $1,268,136.84, "which amount was the

reasonable and actual value of said lands on the effective date of said Act of February 20, 1904''; that at said date the reasonable market and actual value of the remaining 404,966 acres, exclusive of timber, was $542,128.00, and the reasonable and actual value of the timber standing thereon was $1,412,095.00, making a total value of all the lands and timber taken by the Act of February 20, 1904 as of the date of said Act of $3,223,289.84. Part of the timber referred to has been sold and the proceeds, $1,404,025.14, devoted solely to the use of the Red Lake Band (F. 36, R. 86).

The Court further found as a fact (F. 30, R. 82) that ever since the date of the Act of February 20, 1904, defendant has held and continues to hold said lands and the moneys derived therefrom for the sole and exclusive benefit of the Indians belonging on the Red Lake Reservation to the exclusion of all other Chippewas in Minnesota.

There was mooted in the Court below, but not determined by that Court, the question of whether the defendant is entitled to credit, against the value of the property thus wrongfully diverted from the trust, of the value of so much of the lands involved as would have been used in making the allotments which should have been made to the Red Lake Indians under the plain terms of the Act of January 14, 1889, and the agreements. It is the position of the appellants that, since defendant failed to perform its duties as trustee by effecting the allotments ''as soon as practicable'' as required by the Act, and thereafter wholly diverted said lands from the trust in question, thus disabling itself from ever effecting the allotments, it cannot now claim any credit on account of the allotments which it should have, but did not, and now cannot, make.

Having found that appellants were not entitled to any recovery whatever, the court below was not required to, and did not, pass upon this question. If this Court, upon reversal of the judgment below, shall be of the opinion that

defendant is entitled to any such offset or credit, the amount thereof will be for original determination by the lower court under the mandate of this court, and the amount will be readily susceptible of calculation by the court below.

Notwithstanding the fact that that Court did not assume to pass upon this issue, the general character of the evidence which would be the basis of such a calculation may be observed from Findings 31 and 32 (R. 82-3), which show the uniform agricultural character and value of the 256,152 acres sold under the Act of February 20, 1904, and the character, acreage and various values per acre of each of the several kinds of land which constituted the entire balance of the reservation. There was also in the record evidence as to the location and amount and value of the timber on each of the forty-acre tracts of the timbered lands. The character of the land subject to allotment, the quantity of land to be allotted to each Indian were specified by the General Allotment Act of 1887 (24 Stat. 388), which, under Section 3 of the Act of January 14, 1889, governed the allotments in question.

The Court also had before it evidence as to the number of Indians eligible for allotments on the Red Lake Reservation at various dates (F. 33, R. 83), the court finding that the number on March 4, 1890, the date when the agreements became effective, was 1,168; that on February 20, 1904, when the reservation was diverted, the number was 1,418, and that by steady increases from 1890 to 1932 the total number of the Red Lake Indians increased to 1,736 in 1927 and 1,881 in 1932.

In any event, the maximum possible credit on this account would not affect plaintiffs' right to the major portion of their damages. Figured at eighty acres to each Indian, the approximate total area which might have been allotted had the allotments been made promptly after March 4, 1890, to the 1,168 Indians eligible for allotments at that

time, would have been 93,440 acres. The Court below found (F. 31, R. 82) that the 256,152 acres sold under the Act of February 20, 1904, "were substantially uniform in character, bore no timber of value, were generally level, including both tillable lands and marshy meadow acres, and were more suitable for agricultural purposes than the remaining portions of the Red Lake Reservation." Under the General Allotment Act "lands advantageous for agricultural and grazing purposes" were to be allotted. This excluded substantially all the balance of the reservation which was not suitable for either purpose (F. 32, R. 82). The fair value of the lands in the area sold and the price procured therefrom was slightly more than $4.95 per acre, and if it be assumed that all of the allotments would have been made out of this best agricultural area, the maximum credit to which defendant would have been entitled would not exceed the value of the 93,440 acres required for allotment at $4.95 per acre. It is further apparent from Findings 31 and 32 that upon no theory could the value of the lands allottable to the Red Lake Indians constitute more than a relatively small part of the total value of the lands here involved. As stated above, the area reserved was six times that required to effect the allotments.

Assignment of Error VIII.

> "The Court erred in including in its Special Findings of Fact, Findings numbered 37, 38, 39, 40 and 41, relating to claimed offsets by defendant."

Following the filing by the Court below of its Special Findings of Fact, counsel for appellants moved the Court to amend its Findings 37, 38, 39, 40 and 41, which merely set out grand totals, by including therein tabulations of the specific items making up the grand totals, pointing out that by the omission of the specific items the Court below

would deprive appellants of any opportunity to assert any of their objections to any such items on review by this Court. The items requested to be included in the findings had been included in the Commissioner's findings, and many of the items making up the grand totals disclosed on their face that they were either expenditures the United States was obligated to make under treaties, or did not constitute moneys "paid to or expended for" the Chippewa Indians of Minnesota subsequent to January 14, 1889, and were not allowable as set-offs under Section 3 of the Jurisdictional Act (R. 2). The Court below denied the motion, and in a memorandum opinion (R. 34-5), offered the following explanation for the inclusion of said five findings in its Special Findings of Fact:

> "Plaintiffs also complain because the findings do not set out an itemized account which shows the nature of the expenditures referred to in findings 37, and 38. By oversight the total of the amount of expenditures specified in finding 37 was made $74,991.99 too large and this finding will be corrected accordingly. *The court, however, did not decide that any item or items of expenditure made by the Government were proper offsets under the bill which gave this Court jurisdiction of the case. At the present stage of the proceedings there is no occasion to list these items separately in the findings.*" (Italics ours.)

While the Court below says that it did not decide that any item or items of expenditure made by the Government were proper offsets, it made definite findings that the grand totals set out in each were expended by the "*United States although under no obligation so to do, out of the Public Funds for the Chippewa Indians of Minnesota under other than treaty appropriations,*" and refused to include therein tabulations of the specific items making up the grand totals, thus depriving appellants of any opportunity to assert any

of their objections to the grand totals in this Court. Having decided to dismiss appellants' petition, there was no occasion for considering the items of set-off urged by defendant, and the findings complained of were made without consideration of the various items making up the grand totals, and their inclusion in the Special Findings of Fact was improper.

The fact that no consideration was given to the question of what portion of the items included in Findings 37 to 41, inclusive, were proper offsets within the meaning of the Jurisdictional Act, further appears from the second sentence of the decision of the Court of Claims (R. 88). There the court says:

> "Both the defendant and the intervener, the Red Lake Band of Chippewa Indians, contravene the allegations of the petition, *and the defendant sets up some other defenses which, in our view of the case, it is not necessary to consider.*"

In view of the fact that the only pleading interposed by the defendant was a general traverse, and the only other defensive matter appearing in the record consists of the offsets in question, we assume that this has reference to the offsets which of course became immaterial in view of the court's rejection of appellants' main claim.

From the quotations above set forth, it is abundantly apparent that the lower Court has never assumed to pass upon the total of the offsets to which defendant may be entitled, and if this court shall be of the opinion that plaintiffs are entitled to recover, the question of the amount of such offsets, like the question of the amount of any credit to which defendant may be entitled on account of the value of the lands which should have been allotted, will be for original determination by the Court of Claims under the mandate of this court. It is to be noted that the maximum

amount of all such credits and offsets would still leave a substantial recovery to the plaintiffs who, if they are entitled to recover at all, are entitled, under the provisions of the Jurisdictional Act, to the value of the misappropriated property, plus interest at the rate of five per cent per annum for the thirty-two years which have passed since the unlawful taking.

CONCLUSION.

Plaintiffs in this case, under the terms of the Jurisdictional Act, constitute the beneficiaries of the common trust for all the Minnesota Chippewas, created under the Act of January 14, 1889, and it is expressly provided in that Act that they shall be deemed to include not only those entitled to receive the trust income during the period of the trust, but also all those entitled to share in the final distribution of the trust property at the end of the fifty year trust period. Both legal and equitable rights are directed to be adjudicated.

This case is one in which the plaintiffs, including all of the beneficaries of a perfectly defined trust, seek to require the trustee to restore to the trust funds the fair value of property claimed to have been taken by the trustee from the corpus of the trust, and turned over to a separate and distinct class, the Red Lake Indians, constituting only a small part of the beneficiaries of the trust. By the express terms of the agreement by which the property was thus wrongfully turned over, the members of this separate and specially favored class still retain their complete, original interests in the trust as a whole, and the diversion was thus effected without any compensating benefits whatever to the other beneficiaries of the common trust.

That any court having equitable jurisdiction over the trust would require the trustee to account for the value of

trust property thus disposed of in violation of the trust is, of course, not subject to serious dispute. The denial of relief by the Court below was based not upon any failure to recognize the right of plaintiffs to relief under such circumstances, but upon the erroneous finding by the court below that the property in question was in fact not ceded under the Act of January 14, 1889, and therefore never became part of the corpus of the trust at all. As we have endeavored to make plain in the foregoing portions of this brief, the Court of Claims erred in this conclusion.

Having found that plaintiffs had no right to the lands in question, the Court of Claims, although it determined the then total value of the lands appropriated to the sole benefit of the Red Lake Indians under the Act of February 20, 1904, to have been the sum of $3,223,289.84, neglected to pass upon the validity or amount of any credit against this amount to which the defendant might be entitled on account of the lands which should have been used for allotments to the Red Lake Indians, and likewise failed to pass upon the validity of the gratuity offsets asserted by the defendant, although it appears from the findings made that the maximum total of all these claims is substantially less than the total damages to which plaintiffs are entitled.

It is respectfully submitted that the judgment herein should be reversed, and the case remitted to the Court of Claims with instructions to enter judgment for plaintiffs. The basis of that judgment should be the value of the lands reserved for allotment on the Red Lake Reservation as the same existed on February 20, 1904, which was the date of the wrongful appropriation or disposal thereof. If this Court shall be of the opinion that defendant is entitled to any credit or deduction from this amount on account of the value of the lands which should have been used for allotments to the Red Lake Indians, the lower

court should be instructed to determine said amount, deduct the same from the value of the reservation as it stood on the date of its wrongful disposal, and add to the balance interest at five per cent per annum from February 20, 1904, as directed in the Jurisdictional Act. From the amount thus computed, there will, of course, be deducted the amount of such of the offsets asserted by the defendant as the Court of Claims may find to constitute "gratuities paid to and expended for said Indians" within the meaning of the Jurisdictional Act.

Respectfully submitted,

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(8335-C)

No. 228

In the Supreme Court of the United States

OCTOBER TERM, 1936

THE CHIPPEWA INDIANS OF MINNESOTA, APPELLANTS

v.

THE UNITED STATES AND THE RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA (INTERVENORS)

ON APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the Court of Claims (R. 36–113) is reported in 80 C. Cls. 410, and the order and memorandum on appellants' motion for a new trial (R. 34–35) are reported in 80 C. Cls. 487.

JURISDICTION

The judgment from which the appeal is taken was entered April 8, 1935 (R. 114). On January 14, 1935, the Court of Claims filed special findings of fact and conclusions of law (R. 36–113), and entered a judgment dismissing the petition (R. 34).

On February 15, 1935, appellants filed a motion for a new trial (R. 34). On April 8, 1935, the Court of Claims filed an order and memorandum allowing certain requested amendments to the special findings of fact, but overruled the motion for a new trial (R. 34–35). On May 6, 1935, appellants filed a petition for certiorari, which was denied on October 14, 1935 (R. 114; 296 U. S. 576). The present appeal was prayed for under authority of Public Resolution No. 121, approved June 22, 1936 (R. 114–115), and allowed on July 7, 1936 (R. 117). Probable jurisdiction was noted on October 12, 1936.

QUESTIONS PRESENTED

1. Whether certain agreements negotiated with various bands of Chippewa Indians under the Act of January 14, 1889, constituted appellants the beneficiaries of all lands in the Red Lake Reservation which are not necessary to make allotments to the individual Red Lake Indians.

2. Whether appellants are entitled to the value of certain land added to the Red Lake Reservation by the Executive Order of November 21, 1892.

STATEMENT

The facts as found by the Court of Claims (R. 36–87) may be summarized as follows:

The Chippewa Indians of Minnesota, appellants here, are a class composed of all the bands or tribes of Chippewa (or Ojibway) Indians in Minnesota at the time of the passage of the Act of Jan-

uary 14, 1889, *infra,* p. 36, and of the approval of the agreements negotiated thereunder. (Finding 2, R. 37.) This class includes the Red Lake band of Chippewa Indians of Minnesota, who intervened in the court below by authority of the Act of May 18, 1928, infra, p. 35 (Findings 3, R. 37; 6, R. 39).

The Chippewa Indians, in early times, constituted a very large tribe whose range was from Lake Huron westward into Minnesota and the Dakotas. They were composed of a large number of villages, bands, and local divisions, often bearing the names of the village, lake, or river near which they resided. Among these were a band living about Red Lake, in Northern Minnesota, and a band living on the Pembina River in Northern Minnesota and adjacent Manitoba. These were known as the Red Lake and Pembina bands. (Finding 3, R. 37.)

As early as 1785 treaties were made with the Chippewas. At first treaties were made with the "Chippewa Nation", but beginning in 1836 many treaties have been made with either one or a few separate bands of the Nation. Among these were treaties by which the Indians made cessions and were in turn granted reservations in the State of Minnesota. (Finding 3, R. 37–38.)

Prior to the Act of January 14, 1889 (*infra,* p. 36), therefore, the various Chippewa bands resided on twelve reservations in Minnesota (Finding 4, R. 38). That Act offered, for the acceptance or rejection of the Minnesota Chippewas, a plan for the cession to the United States, in trust, of all

the lands in their several reservations except those at White Earth and Red Lake. Only a part of each of these two reservations was to be ceded, and the remainder was to be reserved (Section 1). The ceded lands were to be sold, together with certain timber thereon (Sections 4, 5, 6) and the proceeds funded for the benefit of all the Chippewas of Minnesota as one group (Section 7). The plan provided for the concentration upon the diminished White Earth Reservation of all the Indians except those of Red Lake, who were to remain on the diminished Red Lake Reservation. The plan also provided that allotments to the Red Lake Indians on their reservation, and to the other Indians upon the White Earth Reservation, should be made "as soon as practicable". (Section 3.)

The Act provided that Commissioners should be appointed "to negotiate with all the different bands or tribes" to consummate the plan outlined above. As to the White Earth and Red Lake reservations the cessions were to be of so much "as in the judgment of said commission is not required to make and fill the allotments * * *." They were also required to make a census by bands and classes of all the Chippewas in Minnesota. (Section 1.) (Finding 10, R. 55–62.)

Pursuant to this Act Commissioners were duly appointed (Finding 13, R. 63–64). Beginning at Red Lake they held separate councils with the various Indians occupying each of the several reserva-

tions. Ten separate agreements were concluded. (Findings 13–15, R. 63–65.)

The agreements made with the Red Lake and Pembina bands who occupied the Red Lake Reservation provided that a part of that reservation should be ceded, and a part, which was carefully delimited, should be reserved. An identical agreement was made with a few of the Pembina band who were living on the White Earth Reservation (Finding 16, R. 66–67). The report of the Commissioners stated that the amount which was reserved was larger than would eventually be required to make allotments to the individual Indians, but explained their action by the statement that "as there are swamps and other untillable lands therein, it cannot be reduced until after survey and allotment shall be made." (Finding 20, R. 69.) No allotments have, in fact, ever been made on the diminished Red Lake Reservation (Finding 25, R. 73).

The eight other agreements, by ~~which~~ the bands who did not occupy or belong on the Red Lake Reservation, each ~~obtained~~ a clause substantially as follows (Finding 18, R. 68):

> We do also hereby cede and relinquish to the United States all our right, title, and interest in and to so much of the Red Lake Reservation as is not required and reserved under the provisions of said act to make and fill the allotments to the Red Lake Indians as therein provided.

This provision with reference to the Red Lake Reservation, as contained in these eight agreements, was assented to by more than two-thirds of the male adults of all the Chippewas of Minnesota, as required by the Act (Finding 19, R. 68). On March 4, 1890, the agreements were approved by the President and transmitted to Congress (Finding 22, R. 70–71).

On November 9, 1892, the chairman of the commission which had conducted the negotiations with the Red Lake Indians pointed out, in a letter to the Commissioner of Indian Affairs, that the map which the commission had used was inaccurate, and that a certain area should be added to the amount reserved by the Red Lake agreement to "preserve faith with the Indians * * *." As a result, this small additional area was added to the reservation by Executive Order of November 21, 1892, and has since been treated as a part of the reservation. (Finding 24, R. 72–73).

The Red Lake Reservation, as diminished by the agreement with the Red Lake and Pembina bands in 1889, and including the area added by the Executive Order of 1892, has since been held and administered by the Government as the separate property of the Red Lake bands (Findings 27–30, 34, R. 74–82, 83–85).

On February 20, 1904, the President approved an Act of Congress (*infra*, p. 46) amending, and ratifying as amended, an agreement which had theretofore been negotiated with the Red Lake and

Pembina bands. By that agreement a specified section of the diminished reservation, amounting to 256,152 acres, was ceded to the United States to be sold. The proceeds were to be distributed in *per capita* shares to the Indians on the reservation. (Article III.) It was further agreed that the Red Lake Indians should possess their diminished reservation independent of all other Chippewas and should be entitled to allotments of specified acreage thereon. (Article IV.) Under this Act the land was sold and the proceeds, $1,268,156.84, were credited to the Red Lake Indians. Findings 29–31; R. 76–82.)

Appellants' petition (R. 1–22) alleges that by the Act of January 14, 1889, and the agreements negotiated thereunder, the Red Lake Reservation, except so much as was necessary to make allotments to the Red Lake Indians, was ceded to the United States in trust, to be sold for the benefit of appellants (Par. 4, R. 13–14). Upon that premise, appellants claim that by the Act of February 20, 1904, the United States, by recognizing the Red Lake Indians as the sole owners of the Red Lake Reservation, took the land from appellants, to whom it rightfully belonged, in violation of this trust imposed by the Act of January 14, 1889 (Par. 7, R. 20–21). Appellants claim that the lands of which they had been deprived by the United States constitute *all* the lands of the Red Lake Reservation, alleging that the United States, by unduly de-

laying the allotment of the lands to the individual Red Lake Indians, has now disabled itself as trustee from administering that portion of the trust estate so taken in conformity with the terms of the original trust (Par. 9, R. 21). As a subsidiary claim, in the alternative, appellants allege that the Executive Order of November 21, 1892, improperly and without authority withdrew a portion of the lands held in trust for appellants (Par. 5, R. 14).

On October 24, 1928, the Red Lake bands of Indians, pursuant to the Act of May 18, 1928 (*infra*, p. 35) and leave of court, filed an intervening petition, denying the rights alleged by appellants (R. 23–34).

On January 14, 1935, the Court of Claims entered a judgment dismissing the petition (R. 34). Appellants filed a petition for certiorari, which was denied on October 14, 1935 (R. 114; 296 U. S. 576). The present appeal is taken under authority of Public Resolution No. 121, approved June 22, 1936 (R. 114–115).

SUMMARY OF ARGUMENT

I

Appellants' first claim for recovery rests upon the proposition that by certain agreements negotiated with the United States pursuant to the Act of January 14, 1889, appellants became the beneficiaries of all the lands in the Red Lake Reservation, as diminished by the agreements under that Act, which were not necessary to make allotments to the

individual Red Lake Chippewas. The Government believes this interpretation of the agreements to be wholly unwarranted. Prior to the Act of 1889, the Red Lake bands were the sole owners of the Red Lake Reservation, all other Chippewas having ceded any interest they might have had to the United States. This title in the Red Lake bands was recognized by the United States.

Appellants urge, however, that the Act of 1889, *supra*, recognizes that title is in appellants rather than in only the Red Lake bands. This conclusion is based upon a mere inference, and bearing in mind the fact that title prior to the Act was in the Red Lake bands, it is inconsistent with the principle that a statute should not be construed so as injuriously to divest Indians of their rights or to import bad faith on the part of the United States. The clause upon which appellants rely was, in reality, intended as a quit-claim by all other Indians.

Appellants, therefore, had nothing to cede, and the agreements by which they ceded all their rights could not have been cessions. They were, in fact, the quitclaims which Congress had authorized by the Act. This construction of the agreements is consistent with the statute and with the Red Lake agreements, both of which are inconsistent with appellants' contention.

II

The remaining arguments are very short and need not be summarized here.

ARGUMENT

I

THE AGREEMENTS NEGOTIATED UNDER THE ACT OF JANUARY 14, 1889, DID NOT CONSTITUTE APPELLANTS THE BENEFICIARIES OF A TRUST OF ANY LANDS IN THE DIMINISHED RED LAKE RESERVATION

In brief, appellants' first claim for recovery rests upon the proposition that the United States, in its capacity as trustee of certain lands, has recognized the Red Lake band of Chippewas as the exclusive beneficiaries of the trust, when it should have held the lands for the benefit of all the Chippewas of Minnesota. The lands in question, which constitute the corpus of the trust, are those lands which constituted the Red Lake Reservation in Northern Minnesota, as diminished pursuant to the Act of January 14, 1889 (*infra*, p. 36).

This claim is based upon the premise that, properly interpreted, certain agreements made pursuant to the Act of 1889, *supra*, ceded to the United States for the benefit of all the Minnesota Chippewas those lands at Red Lake which were not required to make allotments to the individual members of the Red Lake band. The Government believes that such an interpretation of the agreements is wholly unwarranted, particularly when it is borne in mind that the Indian title to the lands in question, prior to 1889, was solely in the Red Lake Indians. We will, therefore, first show that the title to the lands prior to the Act of 1889 was not in

appellants but in the Red Lake bands, and second, that in the light of that fact, neither the Act of 1889, nor the agreements with the Indians negotiated under it, can be interpreted as creating a trust of these lands for the benefit of appellants.

A. THE INDIAN TITLE TO THE RED LAKE RESERVATION PRIOR TO THE ACT OF 1889 WAS SOLELY IN THE RED LAKE AND PEMBINA BANDS

The earliest treaties concluded by the United States with the Chippewas may be said to treat the entire Chippewa region, which included a very large territory in what is now Northern Minnesota and the Dakotas, as belonging to the Chippewa Nation, as a whole. See, *e. g.*, Treaty of Prairie des Chiens, 7 Stat. 272. From 1836 on, however, Congress began to take account of the various bands, which were, in fact, distinct units, with marked differences from each other, and with well-defined territories (R. 37), and negotiated treaties with either a separate band or a few bands of the Chippewas. Long before 1889, through these separate treaties, the various bands which, in 1889, occupied the Minnesota reservations, excepting only the bands at Red Lake, had ceded to the United States all title which they might ever have had to the Red Lake Reservation. Each of these treaties involved cessions, and the consideration, in each case, was received by the particular band or bands who were parties to the treaty.

Thus, by the Treaty of September 30, 1854 (10 Stat. 1109) the Chippewas of Lake Superior and

the Chippewas of the Mississippi made mutual cessions, divided by a generally north-south line. The Fond du Lac and Grand Portage bands, each part of the Lake Superior Chippewas, joined in this treaty and by it (Article I) relinquished all their rights in lands west of the dividing line, including the Red Lake territory. The Bois Forte band of the Lake Superior Chippewas, who were parties to the treaty were, by Article XII, of this treaty, excepted from this cession, but, by the Treaty of April 7, 1866 (14 Stat. 765) they made a similar cession (Article II). The band which, in 1889, occupied the Deer Creek Reservation was, in 1866, a part of the Bois Forte band.

By the Treaty of February 22, 1855 (10 Stat. 1165), the Mississippi, Pillager, and Lake Winnibigoshish Chippewas ceded all their rights, of whatever nature, in and to any lands in the Territory of Minnesota, or elsewhere, to the United States, and in return received certain expressly delimited reservations (Article I). None of the land in these reservations included any of the Red Lake Reservation. The bands which joined in this treaty included those Chippewas who were, in 1889, occupying the White Earth, White Oak Point, Mille Lac, Leech Lake, Lake Winnibigoshish, and Cass Lake reservations. See H. Ex. Doc. No. 247, 51st Cong., 1st Sess. See also Treaties of May 7, 1864 (13 Stat. 693) and March 19, 1867 (16 Stat. 719).

Even prior to the last of these treaties, that with the Bois Forte band of April 7, 1866, *supra,* the

Government had negotiated treaties with the Red Lake bands, upon the assumption that they were the exclusive owners of the Red Lake territory. By the Treaty of October 2, 1863 (13 Stat. 667), for example, the Red Lake and Pembina bands ceded to the United States a large part of the area "owned and occupied by them" (Article II), for which the Government agreed to pay, for their sole benefit, a valuable consideration (Article III). The remainder of the area continued to be occupied by the Red Lake bands, and was referred to as "the reservation" (Article VI). See also the Amendatory Treaty of April 12, 1864 (13 Stat. 689). By these treaties the title of the Red Lake and Pembina bands to the Red Lake Reservation was clearly recognized by the United States.[1]

In fact, the only support for the contention that the Red Lake Reservation was the common property of all the Chippewas is the Report of the House Committee on Indian Affairs on the Act of January 14, 1889 (H. Rep. No. 789, 50th Cong., 1st Sess.). It is there stated (p. 2):

> The so-called Red Lake Reservation is simply a remnant of unceded Indian Territory occupied at present by the Red Lake band, but really the common property, so

[1] The fact that the treaties of 1863 and 1864 did not fully delimit the boundaries of the reservation is of no moment. At most, it was the concern of the parties themselves. Eventually they were fully determined (Findings 3, 4, R. 37–38; 6–8, R. 39–51).

> far as the Indian title is concerned, of all the Chippewa Indians in Minnesota.

Similar statements with regard to the title to the Red Lake lands are made on pp. 5–6 (Finding 9, R. 53–55).

The conclusion of the Committee is completely at variance with the other facts with regard to the title to this land. It ignores completely the treaties of 1854, 1855 and 1866, by which all the Minnesota Chippewas, except the Red Lake and Pembina bands, had ceded away any title they might have had in the Red Lake lands. It is inconsistent with the Treaty of October 2, 1863, *supra*, in which the United States treated with the Red Lake bands as the sole owners of these lands. It is at variance with opinions of the Commissioner of Indian Affairs (Finding 8, R. 50–51). It was questioned and disputed by members of the Senate during the course of debate on the bill.[2] We submit, therefore, that whatever probative value it might have had, standing alone, has been completely overcome by the other evidence, and that beyond question the title to the Red Lake Reservation prior to the Act of 1889 was solely in the Red Lake and Pembina bands.

B. NEITHER THE ACT OF JANUARY 14, 1889, NOR THE AGREEMENTS NEGOTIATED THEREUNDER, VESTED ANY TITLE TO THE RED LAKE RESERVATION IN THE APPELLANTS

The major provisions of the Act of January 14, 1889 (*infra*, p. 36), have already been set out in

[2] See Cong. Rec., Vol. 19, Pt. 9, pp. 9130–9131.

the statement (pp. 3–4, *supra*). In general, that Act was designed to unite all the Chippewas in Minnesota on two reservations, instead of on the twelve then in existence (Finding 4, R. 38). Even the two remaining, the White Earth and Red Lake reservations, were to be substantially reduced in size (Section 1.) The remaining reservations, and the parts not reserved of the White Earth and Red Lake reservations, were to be ceded to the United States to be sold for the benefit of all the Minnesota Chippewas (Section 7).

Appellants, in support of their claim to the title to the Red Lake Reservation, rely very largely upon the provision in Section 1 of that Act, which, with regard to the cession of the various lands, provided that:

> * * * such cession and relinquishment shall be deemed sufficient as to each of said several reservations, except as to the Red Lake Reservation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; * * *.

Construing the clause most favorably to appellants' contention, it is but a recognition of title in them by mere inference. It falls far short of being

a recognition in plain and definite terms. Moreover, apart from that fact, there are several factors which indicate that the clause should not be construed as appellants contend.

The most important factor to be considered is the title to the Red Lake Reservation prior to 1889. As we have already pointed out, there can be no serious question of the title of the Red Lake bands. Appellants' construction would mean, therefore, that Congress, by that one clause, was arbitrarily transferring from the Red Lake bands to the appellants all of the Reservation which was not necessary for allotments to the individual Red Lake Indians.[3] It would mean that Congress was doing this without any negotiation with the Red Lake Indians, and it would mean that Congress was making a complete *volte face* from its position in the Treaty of October 2, 1863 (*supra*, p. 13), in which it recognized and treated with the Red Lake Indians as the sole owners of the Red Lake Reservation. Moreover, such a construction is directly contrary to the policy stated in frequent decisions of this Court that no statute shall be construed so as injuriously to divest Indians of their rights or to import bad faith on the part of the United States, unless such intent is clearly and explicitly

[3] Based on the census of 1889 (Finding 13, R. 63–64) this would have amounted to a change in the title of the Red Lake bands from a complete title to approximately an undivided one-seventh interest.

expressed, and the statute admits of no other reasonable construction. *Frost* v. *Wenie*, 157 U. S. 46, 49, 60; *Chew Heong* v. *United States*, 112 U. S. 536, 559; *United States* v. *Minnesota*, 270 U. S. 181, 206.

Actually, the clause seems to have been intended as a direction to secure a quit claim from all the other Chippewas with respect to the Red Lake Reservation. The report of the House Committee on Indian Affairs (*supra*, pp. 13–14) may have created a doubt as to the title of the Red Lake bands, and Congress may have wished to settle the matter definitely in this way. This construction of the clause is borne out by the provision of Section 1 which directed the Commissioners to negotiate with *all* the different bands of Minnesota Chippewas. Two of these bands occupied the Red Lake Reservation, and, without question, the Act directed that separate negotiations be held with these bands. The implication is clear that whatever cessions were to be made at Red Lake should meet with their approval. Appellants are forced to contend that the Red Lake cessions could be made by two-thirds of the male adult Chippewas in Minnesota even if the dissenting one-third contained every Red Lake and Pembina adult male. Obviously, that construction renders nugatory the provision that negotiations be held with *all* the different bands.

Moreover, it should be noted that appellants urge this construction now for the first time. So far as

the record shows, the title of the Red Lake Indians has never been attacked by virtue of the Act of 1889 until the filing of the present suit in 1927. This uniform course of construction over the course of 38 years, during all of which the United States has treated the Red Lake Indians as the sole owners, should be practically conclusive against the construction of the statute which is now urged by appellants. *Logan* v. *Davis*, 233 U. S. 613, 627; *United States* v. *Johnston*, 124 U. S. 236, 253.

C. THEREFORE, THE AGREEMENTS NEGOTIATED PURSUANT TO THE ACT OF 1889 DID NOT CREATE ANY RIGHTS IN APPELLANTS IN THE DIMINISHED RED LAKE RESERVATION

The final step in appellants' argument is their contention that by the agreements negotiated under the 1889 Act they ceded to the United States all the lands at Red Lake not necessary for allotments to the Red Lake Indians. A short description of how these agreements were negotiated will be of assistance in interpreting them properly.

As directed by the Act, the Commissioners negotiated separately with each of the different bands or tribes of Chippewa Indians in Minnesota and entered into agreements with respect to each separate reservation (Finding 15, R. 65). They negotiated, first, with the Red Lake and Pembina bands belonging to and occupying the Red Lake Reservation (Finding 14, R. 64) and made a separate agreement with them (Finding 16, R. 66–67). An

identical agreement was made with some of the Pembinas living on the White Earth Reservation (*Id.*). During the negotiations the purposes of the Act and the purposes of the agreement for which they were negotiating were explained by the Commissioners as they understood them, and as the Indians were made to understand them. Referring to the land to be reserved, the Commissioners told the Indians that it would belong to them and their children forever and that the other bands of Chippewa Indians had no rights therein (Finding 14, R. 64). The wishes of the Red Lake Indians with respect to the part of their reservation to be ceded and the part to be reserved were carefully considered. The area retained by the Indians and reserved for them by the Commissioners was finally agreed upon and set out by metes and bounds in the agreement which was duly executed. All of the remainder of the reservation was ceded (Finding 16, R. 66–67).

After executing the Red Lake agreement, the Commissioners met the other bands or tribes of Chippewas, held numerous council meetings with them at their various reservations (Finding 13, R. 64), and entered into eight additional agreements (Findings 15, R. 65; 17–18, R. 67–68). Under the agreement at White F th Reservation a part was retained by the Indians and reserved by the Commissioners and the remainder ceded (Finding 16, R. 67).

Each of these last eight agreements contains the clause upon which appellants rely (Finding 18, R. 68):

> We do also hereby cede and relinquish to the United States all our right, title, and interest in and to so much of the Red Lake Reservation as is not required and reserved under the provisions of said act to make and fill the allotments to the Red Lake Indians as therein provided.

Based upon this contention that the Act of 1889 constituted a recognition of common ownership of the Red Lake Reservation as being in all of the Chippewas, appellants contend further that this clause ceded all of the Red Lake Reservation, save only enough to make allotments, to the United States in trust for all the Indians.

If we are correct in our contention that the 1889 Act did not recognize appellants' title in the Red Lake Reservation, it seems obvious that this clause in the agreements cannot possibly be construed as a cession of the lands by the appellants, for they had, in fact, nothing to cede. That fact alone, we believe, is enough to defeat the construction for which appellants contend. Actually, however, this construction is inconsistent not only with the Act itself, but also with other agreements which were negotiated under it.

Taken as a whole, it is clear that the Act of 1889 distinguished clearly between land that was to be *ceded* and land that was to be *reserved*. See *Fair-*

banks v. United States, 223 U. S. 215, 222–223. Certain of the reservations were, unquestionably, to be ceded, but a portion of both the White Earth and Red Lake reservations was to be reserved (Section 1). With respect to these two reservations, the cession was to be of (*Id.*)—

> * * * so much of these two reservations *as in the judgment of said commission* is not required to make and fill the allotments required by this and existing acts, *and shall not have been reserved by the Commissioners* for said purposes, * * *

In other words, what was to be ceded and what was to be reserved was to be worked out by the Commissioners with the bands involved, and the Commissioners were authorized to exercise their own judgment, subject only to the approval of the President.

The negotiations of the Commissioners with the Red Lake and Pembina bands resulted in an identical agreement with each band that a large portion of the Red Lake Reservation should be ceded and the remainder, which was carefully described, should be reserved. The reserved portion was larger than, in the judgment of the Commissioners, would eventually be required to fill allotments, but they stated in their Report to the Secretary of the Interior that it could not be reduced until after survey and allotment (Finding 20, R. 69).

The contention of the appellants requires that these agreements with the Red Lake and Pembina

bands be set at naught, for, by this construction, a large portion of even the lands which these agreements expressly reserved is to be considered as included in the cession. Moreover, it requires that the distinction between lands *reserved* and lands *ceded* be completely abandoned, for there can be no question that the lands which appellants claim were expressly reserved. Appellants suggest (Br. p. 45) that the Commissioners reserved the land temporarily, but that is creating a new category of land which is not even suggested in the Act.

Nor can appellants urge that the agreements which were, in fact, negotiated with the Red Lake bands were beyond the authority of the Commissioners or in contravention of the Act. They were specifically approved by the President (Finding 22, R. 70–71), who, as appellants admit (Br. 42), was the sole judge whether the agreements conformed to the Act. Moreover, on the same day the President transmitted to Congress the report of the Commissioners, the agreements, and the accompanying papers, with a statement of his approval (H. Ex. Doc. No. 247, 51st Cong., 1st Sess.). Congress, thus fully advised, has confirmed the action of the Commissioners in making the reservation at Red Lake, not only by never indicating that the agreements were unsatisfactory, but also by passing many subsequent Acts which amount to confirmation of the Red Lake agreements (Finding 34, R. 83–85).

Properly construed, this clause in the eight agreements upon which appellants rely constitutes merely the assent and confirmation of all the Indians to the cessions made by the Red Lake bands and to the reservations which the Commissioners, in the exercise of their judgment, had reserved. This construction gives it the effect of the quit-claim which was apparently intended by the two-thirds clause of the statute. At the same time, it preserves the Red Lake agreements and the distinction between reserved and ceded land.

It should be pointed out that this construction of the agreements is by no means inequitable, so far as appellants are concerned. The land ceded by all the Indians to set up the trust for their joint benefit amounted to about 3,670,000 acres (Finding 23; R. 71). Of this amount the Red Lake and Pembina bands contributed about 2,900,000 acres, or over 79 percent (*Id.*). It is manifestly a great injustice to these bands to contend that they should now be held to have ceded many acres more.

We submit, therefore, that the Red Lake Reservation, as diminished by the Red Lake and Pembina agreements, was the sole property of the Red Lake and Pembina bands. If that be so, appellants cannot complain of any action of Congress by which it treated with those bands as the sole owners. Specifically, there was no violation of appellants' rights when Congress, by the Act of February 20, 1904, recognized the exclusive title of the

Red Lake bands and, with their consent, sold a large portion of the diminished reservation and treated the proceeds as the exclusive property of those bands. This claim was, therefore, properly dismissed by the court below.

II

Appellants Are Not Entitled to Recover for the Lands Added by the Executive Order of November 21, 1892

Appellants urge, as a wholly distinct claim, that a portion of the lands ceded by the original agreement with the Red Lake Indians was thereafter improperly added by executive order to the reserved lands and consequently taken from the corpus of the trust of which they are the beneficiaries. No error has been assigned to the ruling of the lower court dismissing this claim, and appellants, therefore, may not urge the point here. *Pennsylvania R. Co.* v. *Public Utilities Commission*, 298 U. S. 170, 177; *Herbring* v. *Lee*, 280 U. S. 111. In any event we submit that the action taken was not improper.

The negotiations with the Red Lake Indians were conducted upon the basis of the only guide which the parties had—the current Rand-McNally map. Upon this map, which the parties believed to be correct, they outlined the diminished reservation. Actually, because the map was inaccurate, the parties, contrary to the intention of each, agreed upon a line which left a portion of the eastern shore

of lower Red Lake out of the reserved area (Finding 24, R. 72).

This mistake was called to the attention of the President in a letter from Mr. Rice, Chairman of the Commission under the Act of 1889, in which he recommended that there be reserved from sale and added to the reservation the tract of land omitted by mutual mistake, in order to preserve faith with the Indians. The President thereupon added, by Executive Order of November 21, 1892, the 2,984.64 acres involved. This tract has since been considered a part of the Red Lake Reservation. (R. 31, Finding 24, R. 72–73.)

This addition was merely the recognition of the mutual mistake of the parties and, in effect, carried out the original agreement. The area, in other words, was in fact included in the agreements as negotiated and, as reserved land, was never included in the cession for appellants' benefit. We submit that on no theory is appellant entitled to recover the value of the lands.

III

The Court Below Did Not Err in Including Findings of Fact Relating to Offsets

Appellants urge that the court below erred in finding the facts with reference to the offsets advanced by the defendant in the court below. (Findings 37, 38, 39, 40, 41, R. 86–87).

In view of the fact that the court below held that appellants were not entitled to recover, there was no necessity for determining whether or not the offsets were proper under the jurisdictional act, and this question was not, in fact, determined (R. 35). Consequently, as the court below did not decide any issue based upon these findings, it committed no error.

The facts set forth in these findings will be material only in the event that this Court should reverse and remand the case for further action.

CONCLUSION

Wherefore, it is respectfully submitted that the decision below was correct, and should be affirmed.

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DECEMBER, 1936.

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APPENDIX

JURISDICTION

Act of May 14, 1926, c. 300, 44 Stat. 555:

An Act Authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party as in other cases, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of the Act of January 14, 1889 (Twenty-fifth Statutes at Large, page 642), or arising under or growing out of any subsequent Act of Congress in relation to Indian affairs which said Chippewa Indians of Minnesota may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

SEC. 2. Any and all claims against the United States within the purview of this Act shall be forever barred unless suit or suits be instituted or petition filed as herein provided in the Court of Claims within five years from the date of the approval of this Act, and such suit or suits shall make the

Chippewa Indians of Minnesota party plaintiff and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the said Chippewa Indians approved in accordance with existing law; and said contract shall be executed in their behalf by a committee or committees to be selected by said Chippewa Indians as hereinafter provided. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Chippewa Indians to such treaties, papers, correspondence, or records as they may require in the prosecution of any suit or suits instituted under this Act.

SEC. 3. In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Chippewa Indians, and any payment or payments which may have been made by the United States upon any claim against the United States by said Indians shall not operate as an estoppel, but may be pleaded as an offset in such suit or suits as may gratuities, if any, paid to or expended for said Indians subsequent to January 14, 1889.

SEC. 4. If it be determined by the court that the United States, in violation of the terms and provisions of any law, treaty, or agreement as provided in section 1 hereof, has unlawfully appropriated or disposed of any money or other property belonging to the Indians, damages therefor shall be confined to the value of the money or other property at the time of such appropriation or disposal, together with interest thereon at 5 per centum per annum from the date

thereof; and with reference to all claims which may be the subject matter of the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Chippewa Indians in and to such money or other property.

SEC. 5. If in any suit by all the Chippewas of Minnesota against the United States it appears to the court that any band or bands of said Indians are, or claim to be, the exclusive legal or equitable owners, or are entitled to, or claim, a legal or equitable interest greater than an equal distributive share with all the Chippewa Indians of Minnesota, in the proceeds of any judgment or decree that may be entered or passed in settlement of any claims submitted hereunder, the court may permit, or of its own motion compel said band or bands to be made parties to any such suit, so that their rights may be fully and finally determined: *Provided, however,* That nothing herein contained shall be construed as conferring jurisdiction on the court to entertain and hear complaints or claims of a purely individual nature. In the event that any band or bands of said Indians are made parties to any suit herein authorized, the Secretary of the Interior shall ascertain, in such manner as he may deem best, the attorney desired by a majority of said Indians and shall permit the employment of an attorney under contract to represent them as provided by existing law, the compensation to be paid said attorney to be fixed by the Secretary of the Interior, and paid out of any money in the Treasury to the credit of said band or bands of said Indians.

SEC. 6. Authority is hereby given for the employment of not to exceed two attorneys or firms of attorneys to represent the Chippewa Indians of Minnesota in the prosecution of any such suit. Under the direction of the Secretary of the Interior the Indians belonging on the White Earth Reservation are authorized to select a committee consisting of five of their members, and all the other Chippewa Indians in Minnesota are authorized to select a like committee from their members. Each committee so selected, or a majority thereof, is authorized to designate an attorney or firm of attorneys and to execute a contract with such attorney or firm in accordance with section 2 hereof.

SEC. 7. The two attorneys or firms of attorneys authorized to be employed under section 6 shall each receive, during their employment, compensation at the rate of $6,000 per annum, for a period of not exceeding five years, payable in monthly installments as the same become due, and the Secretary of the Treasury is hereby authorized and directed to pay said amounts or installments out of the trust funds standing to the credit of said Indians in the Treasury of the United States, and upon the final determination of said suit the Court of Claims may separately allow said attorneys, or firms of attorneys, such additional compensation as it may deem just and proper considering the nature, extent, character, and value of all services rendered, but in no event shall said additional compensation for the two attorneys or firms of attorneys be in excess of 5 per centum of the total amount recovered; and in no event shall such additional compensation for the two attorneys or firms of attorneys exceed $40,000: *Provided,* That

any such additional compensation shall be fixed by said court in its decree and shall be paid by the Secretary of the Treasury as herein authorized from the trust funds of said Indians standing to their credit in the Treasury of the United States.

SEC. 8. All actual and necessary expenses incurred in the prosecution of said suit by the attorney or attorneys so employed to represent the Chippewa Indians of Minnesota shall be paid by the Secretary of the Treasury as herein authorized as they arise out of the funds standing to the credit of said Indians in the Treasury of the United States upon first being allowed by said court and certified to the Secretary of the Interior.

SEC. 9. Should either of the Indian committees referred to in section 6 hereof be unable or unwilling within one year from the approval by the Secretary of the Interior of the selection of said committees, to designate an attorney or firm of attorneys, the Commissioner of Indian Affairs and the Secretary of the Interior, on behalf of the Indians, are hereby authorized to execute a contract with an attorney or attorneys under such terms and conditions as they may deem advisable, not inconsistent with the terms of this Act.

SEC. 10. The proceeds of all amounts, if any, recovered for said Indians shall be deposited in the Treasury of the United States to the credit of the Indians decreed by said court to be entitled thereto, and shall draw interest at the rate of 5 per centum per annum from the date of the judgment or decree. The costs incurred in any suit hereunder shall be taxed against the losing party; if against the United States such costs shall be included in the amount of the judg-

ment or decree, and if against said Indians shall be paid by the Secretary of the Treasury out of the funds standing to their credit in the Treasury of the United States.

Amending Act of June 18, 1934, c. 568, 48 Stat. 979:

An Act To amend an Act approved May 14, 1926 (44 Stat. 555), entitled "An Act authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of an Act approved May 14, 1926 (44 Stat. 555), be, and the same is hereby, amended to read as follows:

"SECTION 1. That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party as in other cases, notwithstanding the lapse of time or statute of limitations, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of the Act of January 14, 1889 (25 Stat. L. 642), or arising under or growing out of any subsequent Act of Congress in relation to Indian Affairs which said Chippewa Indians of Minnesota may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States. In any such suit or suits the plaintiffs, the Chippewa Indians of Minnesota, shall be considered as including and representing all those entitled to share in the final distribution of

the permanent fund provided for by section 7 of the Act of January 14, 1889 (25 Stat. L. 642), and the agreements entered into thereunder: *Provided,* That nothing herein shall be construed to affect the powers of the Secretary of the Interior to determine the roll or rolls of the Chippewa Indians of Minnesota for the purpose of making any distribution of the permanent Chippewa fund or of the interest accruing thereon or of the proceeds of any judgments: *Provided further,* That nothing herein shall be construed to authorize the submission to the Court of Claims for determination of any individual claim or claims to enrollment with the Chippewa Indians of Minnesota or to share in the interest or principal of the permanent Chippewa fund or in any funds hereafter acquired: *Provided further,* That the qualifications necessary to such enrollment shall not be changed or affected in any manner by the provisions of this Act.

Act of June 22, 1936, c. 714, 49 Stat. 1826:

JOINT RESOLUTION

To carry out the intention of Congress with reference to the claims of the Chippewa Indians of Minnesota against the United States

Whereas by the Special Jurisdictional Act approved May 14, 1926 (44 Stat. L. 555), the claims of the Chippewa Indians of Minnesota against the United States were referred to the Court of Claims "with right of appeal to the Supreme Court of the United States by either party as in other cases", it being the intention that both parties should have the right of appeal to the Supreme Court; and

Whereas the Supreme Court has since decided that notwithstanding such a provision there is no right of appeal, in view of the Judicial Code, as amended, unless the Jurisdictional Act specifically provides that the Supreme Court shall review a case on appeal, anything in the Judicial Code to the contrary notwithstanding: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the claims of the Chippewa Indians of Minnesota under the said Jurisdictional Act of May 14, 1926, shall be reviewed by the Supreme Court of the United States on appeal from the Court of Claims, anything in the Judicial Code, or amendments thereto, notwithstanding: *Provided,* That in any case heretofore decided by the Court of Claims said appeal shall be perfected by either party to the controversy within one year from the passage of this joint resolution, and an appeal shall be taken in all cases hereafter decided by the Court of Claims within three months from and after the date final judgment or decree is entered therein in the Court of Claims.

Act of May 18, 1928, c. 623, 45 Stat. 601:

An Act To confer additional jurisdiction upon the Court of Claims under an Act entitled "An Act authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims," approved May 14, 1926

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case numbered H–76 heretofore filed in the

Court of Claims under and in pursuance of an Act of Congress entitled "An Act authorizing the Chippewa Indians of Minnesota to submit claims to the Court of Claims," approved May 14, 1926 (Forty-fourth Statutes at Large, page 555), wherein the Chippewa Indians of Minnesota are parties plaintiff and the United States is party defendant, if the Court of Claims shall determine that the said Chippewa Indians are entitled to recover a judgment against the United States upon the cause of action therein set forth, the said court shall further determine whether such judgment, or any part thereof, shall be paid by the United States out of funds held by the United States in trust for the Red Lake Band of Chippewa Indians of Minnesota, and if the court shall so determine and said funds are found inadequate, then the unsatisfied portion of said judgment shall be paid by the United States, but in no event shall any part of the land of the Red Lake Reservation be used in any way in payment thereof; and the said Red Lake Band of Chippewa Indians is hereby authorized, on the approval of this Act, to appear in said suit by their attorneys employed in accordance with the provisions of existing law, and defend their rights in the matter.

MERITS

Act of January 14, 1889, c. 24, 25 Stat. 642:

An act for the relief and civilization of the Chippewa Indians in the State of Minnesota

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and directed, within sixty days

after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; and such cession and relinquishment shall be deemed sufficient as to each of said several reservations, except as to the Red Lake Reservation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; and provided that all agreements therefor shall be approved by the President of the United States before taking effect: *Provided further,* That in any case where an allotment in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deprived thereof or disturbed therein except by his own individual consent separately and previously given, in such form and manner as may be prescribed by the Sec-

retary of the Interior. And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, and for the purpose of making the allotments and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and before completing the same, make an accurate census of each tribe or band, classifying them into male and female adults, and male and female minors; and the minors into those who are orphans and those who are not orphans, giving the exact numbers of each class, and making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior, and the other with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States, shall be deemed full and ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further acts or ceremony whatsoever for the purposes and upon the terms in this act provided.

SEC. 2. That the said commissioners shall, before entering upon the discharge of their duties, each give a bond to the United States in the sum of ten thousand dollars, with sufficient sureties, to be approved by the Secretary of the Interior, and conditioned for the faithful discharge of their duties under this act, and they shall also each take an oath to support the Constitution of the United States, and to faithfully discharge the duties of their office, which bonds and oaths shall be filed with the Secretary of the Interior. Said commissioners shall be entitled to a compensation of ten dollars per

day for each day actually employed in the discharge of their duties, and for their actual traveling expenses and board, not exceeding three dollars per day. Said commissioners shall also be authorized to employ a competent interpreter while engaged in the performance of their duties, at a compensation and allowance to be fixed by them, not in excess of that allowed to each of them under this act.

SEC. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; and all allotments heretofore made to any of said Indians on the White Earth Reservation are hereby ratified and confirmed with the like tenure and condition prescribed for all allotments under this act: *Provided, however,* That the amount heretofore allotted to any Indian on White Earth Reservation shall be deducted from the amount of allotment to which he or she is entitled under this act: *Provided fur-*

ther, That any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

SEC. 4. That as soon as the cession and relinquishment of said Indian title has been obtained and approved as aforesaid, it shall be the duty of the Commissioners of the General Land Office to cause the lands so ceded to the United States to be surveyed in the manner provided by law for the survey of public lands, and as soon as practicable after such survey has been made, and the report, field-notes, and plats thereof filed in the General Land Office, and duly approved by the Commissioner thereof, the said Secretary of the Interior, upon notice of the completion of such surveys, shall appoint a sufficient number of competent and experienced examiners, in order that the work may be done within a reasonable time, who shall go upon said lands thus surveyed and personally make a careful, complete, and thorough examination of the same by forty-acre lots, for the purpose of ascertaining on which lots or tracts there is standing or growing pine timber, which tracts on which pine timber is standing or growing for the purposes of this act shall be termed "pine lands", the minutes of such examination to be at the time entered in books provided for that purpose, showing with particularity the amount and quality of all pine timber standing or growing on any lot or tract, the amount of such pine timber to be estimated by feet in the manner usual in estimating such timber, which estimates and reports of all such examinations shall

be filed with the Commissioner of the General Land Office as a part of the permanent records thereof, and thereupon that officer shall cause to be made a list of all such pine lands, describing each forty-acre lot or tract thereof separately, and opposite each such description he shall place the actual cash value of the same, according to his best judgment and information, but such valuation shall not be at a rate of less than three dollars per thousand feet, board measure of the pine timber thereon, and thereupon such lists of lands so appraised shall be transmitted to the Secretary of the Interior for approval, modification, or rejection, as he may deem proper. If the appraisals are rejected as a whole then the Secretary of the Interior shall substitute a new appraisal and the same or original list as approved or modified shall be filed with the Commissioner of the General Land Office as the appraisal of said lands, and as constituting the minimum price for which said lands may be sold, as hereinafter provided, but in no event shall said pine lands be appraised at a rate of less than three dollars per thousand feet board measure of the pine timber thereon. Duplicate lists of said lands as appraised, together with copies of the field-notes, surveys, and minutes of examinations shall be filed and kept in the office of the register of the land office of the district within which said lands may be situated, and copies of said lists with the appraisals shall be furnished to any person desiring the same upon application to the Commissioner of the General Land Office or to the register of said local land office.

The compensation of the examiners so provided for in this section shall be fixed by the Secretary of the Interior, but in no event

shall exceed the sum of six dollars per day for each person so employed, including all expenses.

All other lands acquired from the said Indians on said reservations other than pine lands are for the purposes of this act termed "agricultural lands."

SEC. 5. That after the survey, examination, and appraisals of said pine lands has been fully completed they shall be proclaimed as in market and offered for sale in the following manner: The Commissioner of the General Land Office shall cause notices to be inserted once in each week for four successive weeks in one newspaper of general circulation published in Minneapolis, Saint Paul, Duluth, and Crookston, Minnesota; Chicago, Illinois; Milwaukee, Wisconsin; Detroit, Michigan; Philadelphia and Williamsport, Pennsylvania; and Boston, Massachusetts, of the sale of said lands at public auction to the highest bidder for cash at the local land office of the district within which said lands are located, said notice to state the time and place and terms of such sale. At such sale said lands shall be offered in forty-acre parcels, except in case of fractions containing either more or less than forty acres, which shall be sold entire. In no event shall any parcel be sold for a less sum than its appraised value. The residue of such lands remaining unsold after such public offering shall thereafter be subject to private sale for cash at the appraised value of the same upon application at the local land office.

SEC. 6. That when any of the agricultural lands on said reservation not allotted under this act nor reserved for the future use of said Indians have been surveyed, the Secretary of the Interior shall give thirty days'

notice through at least one newspaper published at Saint Paul and Crookston, in the State of Minnesota, and, at the expiration of thirty days, the said agricultural lands so surveyed, shall be disposed of by the United States to actual settlers only under the provisions of the homestead law: *Provided,* That each settler under and in accordance with the provisions of said homestead laws shall pay to the United States for the land so taken by him the sum of one dollar and twenty-five cents for each and every acre, in five equal annual payments, and shall be entitled to a patent therefor only at the expiration of five years from the date of entry, according to said homestead laws, and after the full payment of said one dollar and twenty-five cents per acre therefor, and due proof of occupancy for said period of five years; and any conveyance of said lands so taken as a homestead, or any contract touching the same, prior to the date of final entry, shall be null and void: *Provided,* That nothing in this act shall be held to authorize the sale or other disposal under its provision of any tract upon which there is a subsisting, valid, pre-emption or homestead entry, but any such entry shall be proceeded with under the regulations and decisions in force at the date of its allowance, and if found regular and valid, patents shall issue thereon: *Provided,* That any person who has not heretofore had the benefit of the homestead or pre-emption law, and who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either of said laws may make a second homestead entry under the provisions of this act.

SEC. 7. That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting

all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares: *Provided,* That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and

self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made, until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars, less any actual interest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years be expended in procuring livestock, teams, farming implements, and seed for such of the Indians to the extent of their shares as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the United States shall be fully reimbursed out of such excess, for all the advances of interest made as herein contemplated and other expenses hereunder.

SEC. 8. That the sum of one hundred and fifty thousand dollars is hereby appropriated, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal and allotments, and the first annual payment of interest herein contemplated and provided for, which money shall be expended

under the direction of the Secretary of the Interior in conformity with the provisions of this act. A detailed statement of which expenses, except the interest aforesaid, shall be reported to Congress when the expenditures shall be completed.

Act of February 20, 1904, c. 161, 33 Stat. 46:

An Act To authorize the sale of a part of what is known as the Red Lake Indian Reservation, in the State of Minnesota

Whereas James McLaughlin, United States Indian inspector, did, on the tenth day of March, anno Domini nineteen hundred and two, make and conclude an agreement with the adult male Indians of the Red Lake Reservation, in the State of Minnesota, which said agreement is in words and figures as follows:

"This agreement made and entered into this tenth day of March, nineteen hundred and two, by and between James McLaughlin, United States Indian Inspector, on the part of the United States, and the Red Lake and Pembina bands of Chippewa Indians belonging on the Red Lake Reservation in the State of Minnesota; witnesseth:

"ARTICLE I. The said Indians belonging on the Red Lake Indian Reservation, Minnesota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title and interest in and to all that part of the Red Lake Indian Reservation situate within the boundaries of Red Lake County, Minnesota, as said county is at present defined and organized the tract hereby ceded being more particularly described as

embracing all that part of the said Red Lake Indian Reservation lying west of the range line between ranges thirty-eight (38) and thirty-nine (39) west of the Fifth (5th) Principal Meridian, the tract of land hereby ceded approximating two hundred and fifty-six thousand one hundred and fifty-two (256,152) acres, and also hereby agree that all of said Indians now residing on the tract hereby ceded shall remove to the diminished reservation within six months after the ratification of this agreement, and shall be paid not exceeding five thousand (5000) dollars in cash by the Indians of said Red Lake Reservation out of the first payment received by them from the proceeds of this cession said five thousand (5000) dollars, or so much thereof as may be necessary, to be paid equitable to those thus removing, in proportion to the value of their respective improvements, which payment by said Red Lake Indians, shall be in full for all improvements which they will abandon, and also for the removal within the diminished reservation of their dead from where they are now buried on the tract hereby ceded.

"ARTICLE II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement, the United States stipulates and agrees to pay to said Indians, in the manner hereinafter provided, the sum of one million (1,000,000) dollars.

"ARTICLE III. It is understood that of the amount to be paid to said Indians, as stipulated by Article II of this agreement, the sum of two hundred and fifty thousand (250,000) dollars shall be paid in cash, per capita, share and share alike, to each man, woman and child belonging on said Red Lake Indian Reservation, within ninety (90) days after the ratification of this agreement, and the re-

mainder of the said sum of one million dollars, viz, seven hundred and fifty thousand (750,000) dollars shall be paid in cash, per capita, in fifteen (15) annual installments of fifty thousand (50,000) dollars each, the first of which fifteen annual installments to be paid in the month of October of the year following that in which payment of the said two hundred and fifty thousand (250,000) dollars is made, as provided in this agreement, and in the month of October of each year thereafter of the succeeding fourteen years, covering the period of said fifteen annual installments.

"ARTICLE IV. It is further agreed that the said Indians belonging on said Red Lake Indian Reservation, Minnesota, shall possess their diminished Reservation independent of all other bands of the Chippewa tribe of Indians and shall be entitled to allotments thereon of one hundred and sixty (160) acres each, of either agricultural or pine land, the different class of land to be apportioned as equitably as possible among the allottees.

"ARTICLE V. It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging on the Red Lake Indian Reservation, Minnesota, of any benefits to which they are entitled under existing treaties for agreements not inconsistent with the provisions of this agreement.

"ARTICLE VI. This agreement shall take effect and be in force when signed by United States Indian Inspector James McLaughlin and by a majority of the male adult Indians, parties hereto, and when accepted and ratified by the Congress of the United States.

"In witness whereof the said James McLaughlin, United States Indian Inspector, on the part of the United States, and the male adult Indians belonging on the Red Lake Indian Reservation, Minnesota, have hereunto set their hands and seals at Red Lake Indian Agency, Minnesota, this tenth day of March, A. D. Nineteen hundred and two.

[SEAL] "JAMES MCLAUGHLIN,
"*United States Indian Inspector.*

No.	Name		Mark	Age	
1	Kah bay no din	Chief	X	67	[SEAL]
2	Mays ko ko noz ay	do	X	70	[SEAL]
3	Pay she ke shig	do	X	35	[SEAL]
4	Nay ay tow up	do	X	54	[SEAL]
5	Ak mun e ay ke zhig	do	X	76	[SEAL]
6	I con je gwon abe	do	X	63	[SEAL]
7	Kay bay gah bow	do	X	55	[SEAL]

and 213 other male adult Indians."

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Red Lake Reservation, Minnesota; that it was fully understood by them before signing, and that the agreement was duly executed and signed by said Indians.

JOS: C. ROY,
C. W. MORRISON,
PETER GRAVES,
Interpreters.

RED LAKE AGENCY, MINN., *March 12, 1902.*

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, U. S. Indian Inspector, and

the two hundred and twenty (220) Indians of the Red Lake Reservation, Minnesota, to the foregoing agreement.

DANIEL SULLIVAN,
Overseer in charge of Subagency.
FRANK H. KRATKA,
Mayor of Thief River Falls, Minn.
B. L. FAIRBANKS,
White Earth Agency, Minn.

RED LAKE AGENCY, MINNESOTA,
March 12, 1902.

I hereby certify that the total number of male adult Indians, over eighteen (18) years of age, belonging on the Red Lake Reservation, is three hundred and thirty-four (334), of whom two hundred and twenty (220) have signed the foregoing agreement.

G. L. SCOTT,
Maj. 10th Cavalry, Acting Indian Agent.

LEECH LAKE AGENCY, MINNESOTA,
March 17, 1902.

And

Whereas it is deemed for the best interests of the said Indians that said agreement be amended and modified as hereafter provided: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said agreement be, and the same is hereby, modified and amended so as to read as follows:

"ARTICLE I. The said Indians belonging on the Red Lake Indian Reservation, Minnesota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Red Lake Indian Reserva-

tion lying west of the range line between ranges thirty-eight and thirty-nine, west of the fifth principal meridian, the tract of land hereby ceded approximating two hundred and fifty-six thousand one hundred and fifty-two acres, and also hereby agree that all of said Indians now residing on the tract hereby ceded shall remove to the diminished reservation within six months after the ratification of this agreement, and shall be paid not exceeding twenty thousand dollars in cash by the Indians of said Red Lake Reservation out of the first payment received by them from the proceeds of this cession, said twenty thousand dollars, or so much thereof as may be necessary, to be paid equitably to those thus removing, in proportion to the value of their respective improvements, which payment by said Red Lake Indians shall be in full for all improvements which they will abandon, and also for the removal within the diminished reservation of their dead from where they now are buried on the tract hereby ceded.

"ART. II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to sell, subject to the homestead laws of the United States, under rules and regulations to be prescribed by the Secretary of the Interior, in tracts not to exceed one hundred and sixty acres to each individual, all of said lands, except lands remaining unsold after five years from the first sale hereunder, which may be sold without reference to the provisions of the homestead law. Said land shall be sold for not less than four dollars per acre, and shall be sold upon the following terms: One-fifth of the purchase price to be paid at the time of sale and the

balance of the purchase price of said land to be paid in five equal annual installments due in one, two, three, four, and five years from date of sale, respectively, and to pay over to said Indians all of the proceeds realized from the sale of the said lands as herein provided.

"ART. III. It is understood that of the amount realized from the sale of said lands a sum of not exceeding three hundred thousand dollars shall be paid in cash per capita, share and share alike, to each man, woman, and child belonging on said Red Lake Indian Reservation within ninety days after the first sale herein provided for, and the remainder of the proceeds of the sale of said lands shall be paid in cash per capita in fifteen annual installments, the first of which fifteen annual installments is to be paid in the month of October of the year following that in which the payment of the said three hundred thousand dollars is made, as provided in this agreement, and in the month of October of each year thereafter, and all moneys received after the expiration of said fifteen years shall be apportioned in like manner among said Indians and paid to them on the first day of October in each year.

"ART. IV. It is further agreed that the said Indians belonging on the said Red Lake Indian Reservation, Minnesota, shall possess their diminished reservation independent of all other bands of the Chippewa tribe of Indians and shall be entitled to allotments theron of one hundred and sixty acres each, of either agricultural or pine land, the different classes of land to be apportioned as equitably as possible among the allottees.

"ART. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging on the Red Lake

Indian Reservation, Minnesota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement. It is the intention of this agreement that the United States shall act as trustee for said Indians to dispose of said land and to expend and pay over the proceeds as received from the sale thereof only as received, as herein provided.

"ART. VI. This agreement shall take effect and be in force when accepted and ratified by the Congress of the United States."

SEC. 2. That said agreement be, and the same is hereby, accepted and ratified as herein amended.

SEC. 3. That the Secretary of the Interior is hereby authorized and directed to sell, subject to the homestead laws of the United States, under such rules and regulations as he may prescribe, in tracts not to exceed one hundred and sixty acres to each individual, all that part of the Red Lake Reservation, in the State of Minnesota, lying westerly of the range line between ranges thirty-eight and thirty-nine west of the fifth principal meridian, approximating two hundred and fifty-six thousand acres. And the said land shall be sold for not less than four dollars per acre, and shall be sold upon the following terms: One-fifth of the price bid therefor to be paid at the time the bid is made, and the balance of the purchase price of said land to be paid in five equal annual installments, due in one, two, three, four, and five years from date of sale, respectively, payment to be made to the receiver of the United States land office for the district in which said land may be situated. And in case any purchaser fails to make such annual payments promptly when due, or within sixty

days thereafter, all rights in and to the land covered by his or her purchase shall at once cease, and any payments made shall thereupon be forfeited and the Secretary of the Interior shall thereupon declare such forfeiture by reoffering said land for sale. And no patent shall issue to the purchaser until the purchaser shall have paid the purchase price and in all respects complied with the terms and provisions of the homestead laws of the United States: *Provided,* That such purchaser shall have the right of commutation as provided by section twenty-three hundred and one of the Revised Statutes of the United States, by paying for the land at the price for which it sold, receiving credit for payments previously made: *Provided further,* That such purchaser shall make his final proof conformable to the homestead laws within six years from the date of sale; that aliens who have declared their intention to become citizens of the United States may become purchasers under this Act, but before making final proof and acquiring title must take out their full naturalization papers; and that persons who may have heretofore exhausted their rights under the homestead law may become purchasers under this Act: *Provided further,* That after the first sale hereunder shall be closed, the lands remaining unsold shall be subject to sale and entry at the price of four dollars per acre by qualified purchasers, subject to the same terms and conditions as herein prescribed as to lands sold at said first sale: *Provided further,* That all lands above described which shall remain unsold at the expiration of five years from the date of the first sale hereunder shall be offered for sale at not less than four dollars per acre (and lands remaining unsold after such sale shall

be subject to private entry and sale at said price), without any conditions whatever except the payment of the purchase price: *And provided further,* That wherever the boundary line of said reservation runs diagonally so as to divide any Government subdivision of a section, and the owner of that portion of such subdivision now being outside of the reservation becomes the purchaser of that portion of such subdivision lying within the reservation, residents and improvements upon either portions of such subdivision as provided by the homestead law shall constitute a compliance as to all such Government subdivisions.

All of the Indians residing upon the tract above described shall remove therefrom to the diminished reservation within six months after the passage of this Act; and there is hereby appropriated from the proceeds of said sale the sum of twenty thousand dollars, or so much thereof as may be necessary, to be paid to those thus removing in proportion to their respective improvements, which payment to the said Red Lake Indians shall be in full for all improvements which they will abandon, and also for the expense of removal within the diminished reservation of their dead from where they are now buried on the tract above described, and the expense of making allotments.

The proceeds of said lands as realized from time to time shall be paid into the United States Treasury to the credit of the Indians belonging on said reservation. Of the amount realized from the sale of said lands a sum not exceeding three hundred thousand dollars shall be paid in cash, per capita, share and share alike, to each man, woman, and child belonging on said Red Lake Indian Reservation, within ninety

days after the first sale herein provided for, and the remainder of the proceeds of the sale of said lands shall be paid in cash, per capita, in fifteen annual installments, the first installment to be paid in the month of October of the year following that in which the payment of the three hundred thousand dollars is made; and all moneys received after the expiration of said fifteen years shall be apportioned in like manner among said Indians and paid to them on the first day of October in each year.

The Secretary of the Interior is hereby vested with full power and authority to make such rules and regulations as to the time of notice, manner of sale, and other matters incident to the carrying out of the provisions of this Act as he may deem necessary, and with authority to continue making sale of said lands until all of said lands shall have been sold.

In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of the land is one dollar and twenty-five cents per acre.

SEC. 4. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received as herein provided.

SEC. 5. That this Act shall take effect and be in force from and after its passage.

U. S. GOVERNMENT PRINTING OFFICE: 1938

Supreme Court of the United States

OCTOBER TERM, 1936

No. 228

THE CHIPPEWA INDIANS OF MINNESOTA,

Appellants,

vs.

THE UNITED STATES,

THE RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA,

Intervenors.

BRIEF FOR THE RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA, INTERVENORS.

FRED DENNIS,
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Detroit Lakes, Minnesota.

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Intervenors.

BRIEF FOR THE RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA, INTERVENORS.

In the Court below the intervenors, The Red Lake Band of Chippewa Indians of Minnesota, joined with the defendant, The United States, in the contention that the plaintiffs are not entitled to recover.

The intervenors again take the same position.

The issue in which the intervenors are involved is that in the event of a recovery by the appellants herein from the United States, the defendant, it cannot recoup itself from any funds held by it belonging to said intervenors.

The Court below having decided, as a conclusion of law, that the plaintiffs, the Chippewa Indians of Minnesota, are not entitled to recover and having dismissed the petition of said plaintiffs, from which decision plaintiffs appeal to

this Court, the further question of recoupment against the intervenors by the defendant is not at this time before this Court. It is only in the event this Court reverses the lower Court and returns this case to it for further consideration that the issue between the defendant and the intervenors need be given any consideration.

Supporting the defendant's position we desire to call the Court's attention to certain very material facts.

I.

For more than two hundred years the Red Lake Indians, exclusive of all other bands of Chippewa Indians, have resided upon and occupied said reservation and have in each and every instance, except one, been recognized, conceded and considered to have been the exclusive owners of the possessory right to their reservation. This has always been their claim. No other Indian or tribe of Indians ever made any claim of any right therein, until this proceeding. The Courts, Congress and the several Departments of the Government are and always have been in agreement with the Red Lake Band. The one exception is the report of the Committee on Indian Affairs in the House of Representatives in returning to the House a bill, which, after it was amended in the House and rewritten in the Senate, finally became the Act of January 14, 1889.

II.

June 19th, 1860, an Act (12 Stat. 44, 59) provided for negotiations with the Red Lake Band of Indians for a cession of a part of their then reservation. Pursuant thereto a treaty was concluded on October 2, 1863, ratified with amendments and proclaimed May 6, 1864 (13 Stat. 667).

The land ceded by said treaty contained about 2,905,000 acres, was adjoining on the west to the now diminished reservation, and to the tract of land ceded by the Red Lake Indians under the Act of February 20, 1904 (33 Stat. 48), which latter session plaintiffs contend was not in accordance with the terms of the Act of 1889, and for which they now claim compensation.

No other Indians joined in the Treaty of 1863. The ownership of the lands ceded in 1863 was recognized to be in the Red Lake Indians. No claim was ever made for any distribution of the proceeds of the sale of that large territory. No change of ownership or of possession was made during the next twenty-six years.

Argument as to Statement Number Two:

If the Red Lake Indians owned their reservation in 1863 and continued to occupy the unceded part, exclusive of all other persons, they owned the diminished part in 1889. Indians have the unquestionable right to the lands they occupy until that right is extinguished by a voluntary cession to the Government.

Leavenworth, L. & G. R. R. Co. vs. U. S., 92 U. S. 733.
Cherokee Nation vs. Georgia, 5 Peters 1.
United States vs. Cook, 19 Wall. 591.
Minnesota vs. Hitchcock, 185 U. S. 373.
Lone Wolf vs. Hitchcock, 187 U. S. 553.
Ex Parte Moore, 221 Fed. 554.

In the Cook case, *supra*, this Court said that the Indian title was as sacred as the title of the United States to the fee.

III.

Appellants' title is grounded upon the Act of January 14, 1889, and agreements made with all the eleven bands of Chippewa Indians (page 25, appellants' brief). The Act of January 14, 1889, is definitely made the starting point, and the basis of all claimed rights (page 29, appellants' brief).

Argument as to Statement Number Three:

Certainly if the United States could by the passage of the Act of 1889 vest a title in the appellants to lands on the Red Lake Reservation, which they do not now contend belonged to them prior to the passage of that Act, the same Sovereign Power could, by the positive and explicit provisions of the Act of February 20, 1904, Art. 4 (Record, page 17), effectively determine that the same Red Lake Band of Indians are the sole and exclusive owners of the diminished reservation and entitled to all of the proceeds from the sale thereof to the United States, and such action of Congress is not open to judicial review.

Lone Wolf vs. Hitchcock, 187 U. S. 553.
Cherokee Nation vs. Hitchcock, 187 U. S. 295.
Choate vs. Tropp, 224 U. S. 665.
Tigen vs. Western Inv. Co., 221 U. S. 286.
U. S. vs. Kagama, 118 U. S. 375.

IV.

As late as May 18, 1928, in the Act of Congress authorizing the Red Lake Indians to intervene in this case, to make sure that none of the lands of the present diminished Red Lake Reservation could ever be taken from them as a result of this suit, Congress provided:

"That in no event shall any part of the land of the Red Lake Reservation be used in any way in payment thereof" (the Judgment) (Record 24).

V.

The Act of 1889 authorized the Commissioners to negotiate with the Red Lake Indians for a cession of so much of their reservation as in the judgment of the Commission is not required to make and fill allotments and shall not have been reserved by the Commissioners for said purpose. The amount of land reserved was left entirely to the discretion of the Commission. The Commissioners did reserve a tract of land as directed by said Act (Record, page 16). H. R. Ex. Doc., No. 247, 51st Congress, 1st Sess. Cong. Doc., Series 2747.

The Commissioners in negotiating that treaty with the Indians at Red Lake, told them:

Page 72. Bishop Marty: "We are only to reserve so much land for you, so that when your children grow up there will be plenty for all of you." "You are to have as much land as you can use, you and your children."

Page 75. "We do not say that the other Indians have a right on this reservation. I am afraid you may not have understood this word consolidation in its true meaning. It does not give the Indians of other lands any right here. It does not give you any right upon their property."

Page 85. "From all we know of the Government of the United States we are sure that what is promised to you will be carried out."

Page 84. Mr. Rice: "We have heard your proposition and we think we can perhaps change the lines so as to give you all you want, and very much more than you will have

use for—you, your children, grandchildren and great grandchildren."

The Indians said:

Page 72. May dway gon on ind: "I will never consent to the allotment plan. I wish to lay out a reservation here, where we can remain with our bands forever."

Page 73. "Another objection we have to the Act is the allotment part; that allotments should be made to us in severalty. We wish that any lands that we possess should be not only for our own benefit but for our posterity, our grandchildren hereafter."

Page 83. "We want the reservation we now select to last ourselves and our children forever."

Page 75. Nah guan a gwon abe: "Those on the other reservations have no interests on this reservation. The people you see here are the only ones who have an interest in this reservation. Whether it is large or whether it is small the value of this reservation is only for these people here."

Page 83. "Most of the land we select is valueless to the whites and to ourselves, but still we would like to keep it intact."

Page 84. Mays co co no yay: "The Red Lake Indians concede all to you—all the land that is worth anything, and that will bring any revenue; the rest we wish to retain for ourselves. The young men want it for their children who will also have children."

The Commissioners after leaving Red Lake immediately proceeded to White Earth and the following appears in the Council Proceedings at that point:

Page 100. Mr. Rice: "What was reserved of the Red Lake Reservation was reserved for the Red Lake Indians alone."

Page 109. Wob on ah quod (referring to a former agreement): "At the time I uttered these words, 'I shall not touch the pen for any consideration ceding lands which I have no right to cede'; and I have no right to cede any of the Red Lake lands."

Page 114. "But the agreement with the Red Lake Indians is that no others can go there, and if they have an overplus of lands which they wish to dispose of in the future, they will have the sole benefit of the sale of those lands, which will not go into the pool."

The Indians above quoted are chiefs and recognized leaders of the bands. They were the first to sign the agreements at Red Lake. They were:

May dway gon on ind
Nah guan a gwon abe
Mays co co no yay

Wob on ah quod was the head chief of the White Earth band.

Argument as to Number Five:

The Red Lake Indians certainly did not cede the lands that were reserved. The construction of the agreement must not be to their prejudice. How the words of the treaty were understood by these unlettered people rather than their technical meaning should form the rule of construction.

Cherokee Nation vs. U. S., supra.

U. S. vs. Kagama, 118 U. S. 375.

Worcester vs. Georgia, 6 Pet. 515.

United States vs. Winans, 198 U. S. 371.

Jones vs. Meehan, 175 U. S. 1.

VI.

Again in 1902 when the United States obtained the cession of land through Indian Inspector James McLaughlin he told the Red Lake Indians that they would never be required to take allotments, that the proceeds from that sale belonged to them and that the diminished reservation was theirs alone.

No allotments have ever been made on the Red Lake Reservation. By the Act of Congress of June 18, 1934, no allotments can ever be made.

VII.

Neither appellants nor appellee can successfully challenge the title of intervenors to the Red Lake Reservation because of the action of the legislative executive and judicial departments of the Government in dealing with the Chippewa Indians of Minnesota over a long period of time as shown by treaties, statutes, executive orders, departmental proceedings and judicial interpretations as follows:

A. By treaties.

1. Treaties with the Red Lake Indians of Minnesota in which it recognized the exclusive ownership of these Indians to certain lands, allowed them the proceeds therefrom, and did not recognize the right of the other Chippewa Indians of Minnesota to join in making the treaty or to share in the consideration.

a. Treaty of October 2, 1863 (13 Stat. 667) in which the Red Lake Indians ceded to the United States approximately eight million acres of land,

tract number 445, Royce's Cessions. This treaty, in effect, fixed the western boundary of the Red Lake Reservation.

b. Agreement of March 10, 1902 (F. 34, R. 99), in which the Red Lake Indians agreed to cede to the United States 256,152 acres of land.

2. Treaties with other bands of Chippewa Indians in Minnesota in which the United States recognized their ownership of lands, their right to cede same and to receive the consideration therefor to the exclusion of the Red Lake band.

a. Treaty of August 21, 1847 (9 Stat. 908), in which the Pillager bands ceded to the United States tract number 269, Royce's Cessions.

b. Treaty of September 30, 1854 (10 Stat. 1109), in which the Chippewa of Lake Superior and the Mississippi bands ceded to the United States tract number 332, Royce's Cessions, out of which was reserved two tracts for two of the Lake Superior bands (the Fond du Lac and the Grand Portage), tracts numbers 338 and 339, respectively.

c. Treaty of February 22, 1855 (10 Stat. 1165), in which the Chippewa of the Mississippi ceded to the United States tract number 357, Royce's Cessions, out of which there was set apart separate reservations for each of these six different bands, numbers 453, 454, 455, 456 and 457. By the same treaty three tracts within the boundaries of the cession were reserved for the Pillager and Lake Winnibigoshish bands. This

treaty, in effect, fixed the southern and eastern boundary of the Red Lake Reservation.

d. Treaty of May 7, 1864 (13 Stat. 693), in which the Chippewa of Mississippi with the Pillager and Lake Winnibigoshish bands ceded to the United States the six reservations set apart for them by the treaty of 1855, and in lieu thereof received tract number 507, Royce's Cessions.

e. The treaty of April 7, 1866 (14 Stat. 765), in which the Bois Forte Chippewa, one of the Lake Superior bands, ceded to the United States tract number 482, Royce's Cessions. Under the same treaty tracts numbers 483 and 484 were set apart for the Bois Forte band.

f. Treaty of March 19, 1867 (16 Stat. 719), in which the Chippewa of Mississippi ceded to the United States two tracts, numbers 507, designated number 507, Royce's Cessions, as a consideration for tracts numbers 508 and 509.

g. Treaty of March 3, 1873 (17 Stat. 539) in which the Mississippi band ceded to the United States tract number 542.

B. By Acts of Congress.

1. The Act of February 20, 1904, *supra*, in which Congress expressly provided that the Red Lake Indians should own the Red Lake Reservation exclusively. This is the statute presented under subdivision IV of this brief, and is sufficient in itself to estop the United States from denying the exclusive owner-

ship of the Red Lake Reservation by the Red Lake Indians, and, therefore, precludes a judgment in favor of the United States and against the Red Lake Indians.

2. The Act of October 1, 1890 (26 Stat. 660), wherein Congress authorized a railroad right-of-way through the Red Lake Reservation and directed the payment of the consideration to the Red Lake Indians only.

3. The Act of April 14, 1896 (29 Stat. 92), providing for the payment of damages for a railroad right-of-way through the Red Lake Reservation to the Red Lake Indians only, and requiring their consent before the Act became effective.

4. The Act of March 3, 1903, *supra*, authorizing a sale of the western portion of the Red Lake Reservation and providing for the payment of the proceeds to the Red Lake Indians only.

5. The Act of March 26, 1910 (36 Stat. 265), granting an extension of time for payment of installments due on sales of land under the Act of February 20, 1904.

6. The Act of February 16, 1911 (36 Stat. 913), providing for the sale of unsold lands ceded under the Act of February 20, 1904, and directing the payment of the proceeds to the Red Lake Indians only.

7. The Act of May 18, 1916 (39 Stat. 122), authorizing a sale of timber on the Red Lake Reservation and payment of the proceeds to the Red Lake Indians only.

8. The Act of May 25, 1918 (40 Stat. 561), appropriating moneys out of proceeds from sale of timber on the Red Lake Reservation for repayment of Red Lake Indian tribal funds.

9. The Act of February 21, 1921 (41 Stat. 1105), creating Red Lake drainage district and directing the payment of compensation for damages to the Red Lake Indians, only, and the payment of benefits out of the Red Lake tribal fund.

10. The Act of June 14, 1932 (47 Stat. 306), authorizing a per capita payment to the Red Lake Indians only from funds derived from timber sold from the Red Lake Reservation.

11. The Act of June 16, 1933, authorizing a per capita payment to the Red Lake Indians only from funds derived from timber sold from the Red Lake Reservation.

12. Numerous appropriation acts from June 30, 1919, to February 17, 1933 (F. 41, R. 108), in which Congress recognizes the exclusive ownership of the Red Lake Indians to the diminished Red Lake Reservation and the funds derived from the sale of lands and timber therefrom.

C. By executive orders.

1. Executive order of November 21, 1892, adding 2,982.64 acres of land to the Red Lake Reservation to correct an error resulting from a mutual mistake in the description of the cession by the Red Lake Indians to the United States under the Act of 1889, *supra*.

2. Executive order of October 29, 1873, setting apart as an addition to the Lake Winnibigoshish Reservation tract number 549, Royce's Cessions.

3. Executive order of November 4, 1873, setting apart as an addition to the Leech Lake Reservation tract number 550, Royce's Cessions.

4. Executive order of May 26, 1874, setting apart as an addition to the Leech Lake Reservation tract number 567, Royce's Cessions.

5. Executive order of March 18, 1879, setting apart as an addition to the White Earth Reservation tract number 610, in two parts, Royce's Cessions.

6. Executive order of July 13, 1883, restoring to the public domain tract number 610.

7. Executive order of December 20, 1881, setting apart as an addition to the Bois Forte Reservation tract number 629.

8. Executive order of June 30, 1883, setting apart for the Bois Forte Reservation tract number 484, Royce's Cessions.

D. By departmental action.

1. Letter of the Commissioner of Indian Affairs with report of the Secretary of the Interior to the President, January 25, 1886, stating:

> "They (Red Lake Indians) own and occupy an immense area of country north of White Earth, which has never been ceded to the United States; the Indians still retain all their original rights in the soil • • •" (F. 5, R. 67).

2. In a communication from the Commissioner of Indian Affairs to the Secretary of the Interior, February 11, 1887, the Commissioner said:

> "The land lying between and north of the boundaries of these two cessions was thus recognized as the country of the Red Lake and Pembina Indians (the latter merged with the former), to which these Indians have all the original rights of land occupancy attaching to unceded Indian lands". (F. 6, R. 68).

3. The Secretary of the Interior transmitted a report from the Commissioner of Indian Affairs to the President in accordance with a request dated January 3, 1889, in which the Commissioner said:

> "• • • None of the Indians in that state, except the Red Lake Indians, have any right, title or interest in the Red Lake Reservation • • •" (F. 7, R. 68).

4. The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on May 24, 1889, instructed the Commissioners acting under the Act of 1889 as follows:

> "It has not heretofore been claimed by anyone, and so far as the knowledge of this office extends, and certainly not by the Indians themselves, that the Red Lake Reservation is the common property of all the Chippewa Indians in Minnesota. None but the Red Lake and Pembina bands have ever claimed an interest in said Reservation, and said Indians have always been recognized and regarded as the sole owners by right of original land occupancy, the

lands having never been ceded to the United States" (F. 8, R. 68).

5. The statements and representations of the Commissioners to the Indians in the negotiations of the agreement of 1889 to the effect that the Red Lake Indians were the exclusive owners of the Red Lake Reservation and that the other Chippewa Indians of Minnesota own no interest therein (F. 18, R. 79-83).

The record is teeming with instances where the Department of the Interior maintained that the Red Lake Indians were the exclusive owners of the Red Lake Reservation, and such is the contention of the government in this case.

E. By decisions of the Supreme Court of the United States.

Minnesota vs. Hitchcock, 185 U. S. 373.

United States vs. Holt State Bank, 270 U. S. 49, 58.

Jones vs. Meehan, 175 U. S. 1.

United States vs. Forty-three Gallons of Whiskey, 93 U. S. 188.

United States vs. Mille Lacs Indians, 229 U. S. 498.

The Red Lake Indians are not seeking a judgment in this case, all they ask is that the United States continue to observe the agreement made with them in 1904 and consistently to pursue its long established policy in dealing with them and their affairs. The fund held in trust for them by the United States came from the sale of a part of the home where they had lived since the earliest history of Minnesota and long prior thereto.

The Red Lake Indians vigorously contend that the plain-

tiffs in this suit are not entitled to any judgment because of any fault, misconduct or wrongful or illegal act on their part; that if the plaintiffs are entitled to a judgment for any sum, it is because of some mistaken policy, or wrongful or illegal act on the part of the United States for which the Red Lake Indians are not responsible; and that should any judgment be rendered for the plaintiffs and against the United States, no part thereof can legally, equitably or justly be charged to them or paid with their funds held in trust for them by the United States.

Respectfully submitted,

FRED DENNIS,
Attorney for Intervenors,
Detroit Lakes, Minnesota.

SUPREME COURT OF THE UNITED STATES.

No. 228.—October Term, 1936.

The Chippewa Indians of Minnesota, Appellants, *vs.* The United States and the Red Lake Band of Chippewa Indians of Minnesota, (Intervenors).	Appeal from the Court of Claims.

[May 17, 1937.]

Mr. Justice Van Devanter delivered the opinion of the Court.

This was a suit by the Chippewa Indians of Minnesota against the United States to recover the value of 663,421 acres of land alleged to have been ceded to the defendant under an express trust for the benefit of the plaintiffs and subsequently disposed of or appropriated by the defendant in disregard of the trust and of the rights of the plaintiffs. This 663,421 acres comprised what is hereinafter described as the *diminished* Red Lake Reservation.

The suit was brought and conducted under permissive legislation.[1] The defendant traversed the allegations of the plaintiffs' petition; and by leave of court, and in virtue of authority given in the permissive legislation, the Red Lake Band of Chippewas intervened for the purpose of opposing the plaintiffs' claim and of protecting its own interests. After a full hearing the court made special findings of fact and rendered a judgment for the defendant. 80 C. Cls. 410. The plaintiffs were allowed an appeal to this Court under a special supplement to the permissive legislation.

The Chippewa Indians of Minnesota, plaintiffs below and appellants here, comprise those who are designated in the act of January 14, 1889, *infra*, as "all the Chippewa Indians of Minnesota," otherwise described in the permissive legislation already mentioned,[2] as

[1] Act May 14, 1926, c. 300, 44 Stat. 555, as specially supplemented May 18, 1928, c. 623, 45 Stat. 601; June 18, 1934, c. 568, 48 Stat. 979; June 22, 1936, c. 714, 49 Stat. 1826.

[2] Act June 18, 1934, c. 568, 48 Stat. 979.

all who are "entitled to share in the final distribution of the permanent fund" provided for in § 7 of the act of 1889.

The findings below are too long to be repeated here and will be much summarized.

About the beginning of the last century the Chippewas constituted one of the larger Indian tribes in the northerly part of the United States. In early treaties they were dealt with as a single tribe and were shown to be occupying a large area reaching from Lake Huron on the east to and beyond Lake Superior on the west.[3] In later treaties they were regarded as divided into distinct bands; and particular bands—in some instances a single band and in others a limited plurality of bands—were recognized as occupying separate areas in Michigan, Wisconsin, Minnesota and eastern Dakota, and as entitled to hold or cede the same independently of other bands and of the Chippewas as a whole.[4] Some of the bands became permanently settled in Michigan and Wisconsin. Others—usually as a single band and exceptionally as a group of a few bands—became the recognized occupants and holders of twelve separate reservations in Minnesota. It is to these Minnesota bands and reservations that this suit relates.

One of the bands in Minnesota was the Red Lake which had come to include or be associated with the Pembina band. For a long period these two bands had been the exclusive occupants of the Red Lake Reservation, the largest of all. The next largest reservation was the White Earth. Its occupants were mostly members of the Mississippi bands; but some members of the latter were occupying older reservations which the White Earth had been designed to displace. This reservation contained an unusual proportion of land well suited for individual Indian allotments; and a small part of it had been allotted to individual Indians. The ten smaller reserva-

[3] Treaties Aug. 3, 1795, 7 Stat. 49; July 4, 1805, 7 Stat. 87; Nov. 17, 1807, 7 Stat. 105; Sept. 24, 1819, 7 Stat. 203; June 16, 1820, 7 Stat. 206; July 6, 1820, 7 Stat. 207; Aug. 29, 1821, 7 Stat. 218; April 19, 1825, 7 Stat. 272; Aug. 5, 1826, 7 Stat. 290; Aug. 11, 1827, 7 Stat. 303.

[4] Treaties May 9, 1836, 7 Stat. 503; Jan. 14, 1837; 7 Stat. 528; Dec. 20, 1837, 7 Stat. 547; Oct. 4, 1842, 7 Stat. 591; Aug. 2, 1847, 9 Stat. 904; Aug. 21, 1847, 9 Stat. 908; Sept. 30, 1854, 10 Stat. 1109; Feb. 22, 1855, 10 Stat. 1165; Oct. 2, 1863, 13 Stat. 667; April 12, 1864, 13 Stat. 689; May 7, 1864, 13 Stat. 693; April 7, 1866, 14 Stat. 765; Mar. 19, 1867, 16 Stat. 719.

tions require no other special mention than that some of the Indians belonging to them had received individual allotments in them.

By an act of January 14, 1889, c. 24, 25 Stat. 642, Congress proposed to all bands of Chippewas in Minnesota a plan for their relief and civilization through allotments in severalty, cession and sale of lands not required for allotments, placing the proceeds of sales, less various expenses, in a permanent interest bearing fund as hereinafter stated, using the interest for the support and education of these Indians, and ultimately distributing per capita the principal of the fund.

The act created a commission to negotiate with the different bands for a complete cession to the United States of their title and right to all of each reservation, "except the White Earth and Red Lake reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the commissioners for said purposes".

The cession was to be made for the purposes and upon the terms stated in the act and was to be sufficient as to each reservation, except the Red Lake, if made in writing by two-thirds of the male adults over eighteen years of age in the band occupying and belonging to such reservation, and as to the Red Lake was to be sufficient if made in like manner "by two-thirds of the male adults of all the Chippewa Indians in Minnesota". All cession agreements were to become effective if and when approved by the President.

For the purpose of ascertaining whether the proper number of Indians joined in the cession, and for the further purpose of making allotments and payments to individual Indians, the act required the commissioners to make an accurate census of each band, classifying the members as male and female adults and male and female minors, and further classifying the minors into those who were and those who were not orphans.

As soon as the census was taken and the cession obtained and approved, all of the Chippewas in Minnesota, except those on the Red Lake Reservation, were to be removed to the White Earth Reservation; and as soon as practicable allotments in severalty were to be

made on the Red Lake Reservation to the Indians belonging to that reservation, and on the White Earth Reservation to all of the other Chippewa Indians in Minnesota—all allotments to be in conformity with the act and with another designated statute.[5] These provisions for allotments were qualified by other provisions to the effect, first, that no existing allotment in any of the reservations should be disturbed, except with the allottee's individual consent; secondly, that existing allotments in the White Earth Reservation were ratified and should be adjusted in tenure, conditions and quantity to the allotments provided for in the act; and, thirdly, that any Indian on any of the reservations might in his discretion take his allotment under the act on the reservation where he was so residing, instead of being removed to and taking an allotmtent on the White Earth Reservation.

As soon as the cession was obtained and approved the lands ceded to the United States were to be surveyed; and as soon as practicable after the survey the lands so ceded were to be examined and classified as pine lands or agricultural lands, and such as were classified as pine lands were to be appraised with particular regard to the quantity and quality of the pine, and were to be sold by the United States at public auction, for cash, at not less than the appraised value, in forty-acre or smaller parcels.

The agricultural lands "not allotted under this act nor reserved for the future use of said Indians" were to be disposed of by the United States to actual settlers under the homestead law at one dollar and twenty-five cents an acre, to be paid in five equal annual instalments.

As provided in § 7 of the act, all money accruing from the disposal of the ceded lands, after deducting enumerated expenses, was to be placed in the Treasury of the United States to the credit of "all the Chippewa Indians in the State of Minnesota" as a permanent interest bearing fund for the period of fifty years. The interest was to be used for the support and education of such Indians, and at the end of the fifty years the permanent fund was to be divided and paid to "all of said Chippewa Indians and their issue

[5] For provisions for enlarged allotments on White Earth Reservation see Act of April 28, 1904, c. 1786, 33 Stat. 539, and Fairbanks v. United States, 223 U. S. 215. And for provision for enlarged allotments on Red Lake Reservation see Act of February 20, 1904, c. 161, 33 Stat. 46, 48, Article IV.

then living'' in cash and equal shares, subject to a reserved power in Congress to make limited appropriations from the fund during the fifty year period for the purpose of promoting civilization and self-support among these Indians.

Under the act of 1889 the commission, besides making the required census, conducted separate negotiations with each of the bands with the following results:

1. The Red Lake and Pembina bands (sometimes spoken of collectively as the Red Lake band or Red Lake Indians), occupying and belonging to the Red Lake Reservation, ceded to the United States, for the purposes and upon the terms stated in the act, their title and right to all of that reservation, save a designated tract containing 661,118 acres which the commission ''reserved'' for the purpose of making and filling allotments to them. The cession was made by a written instrument showing what lands were reserved, and bearing the assent of more than two-thirds of the male adults over eighteen years of age in those bands.

2. The bands occupying and belonging to the White Earth Reservation, by a like instrument bearing a like assent, ceded to the United States their title and right to all of that reservation, save a specified tract which the commission had reserved for allotments. The instrument making this cession contained a further cession by such bands of their title and right to ''all and so much of the Red Lake Reservation as is not required and reserved under the provisions of said act to make and fill the allotments to the Red Lake Indians in quantity and manner as therein provided''.

3. As to each of the other ten reservations the band occupying and belonging to it, by a like instrument bearing a like assent, ceded the whole of such reservation to the United States, and included in the instrument a further cession respecting the Red Lake Reservation such as was included in the cession by the Indians of the White Earth Reservation.

4. The cession of so much of the Red Lake Reservation as was not required and reserved for allotments had the written assent not only of two-thirds of the male adults over eighteen years of age in the bands of that reservation, but also of two-thirds of the male adults of such age of all the Chippewas in Minnesota.

After making the census and obtaining the cessions the commission transmitted, through the Commissioner of Indian Affairs, to the Secretary of the Interior a report accompanied by the census, the instruments of cession, and a transcription of the negotiations with the several bands as stenographically reported. In its report the commission stated that the tract reserved by it from the Red Lake Reservation for allotments to the Red Lake Indians, of which there were then 1,168, contained 661,118 acres, and that "this is larger than they will eventually require, but as there are swamps and other untillable lands therein, it cannot be reduced until after survey and allotments shall be made".

The Secretary of the Interior transmitted the commission's report and the accompanying papers to the President for consideration by him; and on March 4, 1890, the President approved each instrument of cession and on the same day transmitted to the Congress for its information a statement of his approval, together with a copy of the commission's report and of all accompanying papers except the census rolls.*

By an act of August 19, 1890, c. 807, 26 Stat. 336, 357, Congress recognized the cessions, as so approved, by making appropriations to carry out such provisions of the act of 1889 as were to be given effect if and when the cessions were obtained and approved.

In instructions issued to the commission by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, before the work of the commission was begun, it was said:

"It has not heretofore been claimed by anyone, and so far as the knowledge of this office extends, and certainly not by the Indians themselves, that the Red Lake Reservation is the common property of all the Chippewa Indians in Minnesota. None but the Red Lake and Pembina bands have ever claimed an interest in said reservation, and said bands have always been recognized and regarded as the sole owners by right of original Indian occupancy, the lands having never been ceded to the United States."

And the commission was further instructed that it was "necessary to exercise great care to reserve a sufficient area of land to make the required allotments"; and also that "the boundaries of the

* House Ex. Doc. No. 247, 51st Cong., 1st Sess.

tracts so reserved . . . must be definitely determined and fixed and accurately described so that the Indians . . . [will know] just what and how much land they are parting with."

The minutes of the negotiations by the commission with the Indians of the Red Lake Reservation show that the commission assured these Indians that the land which it would reserve out of that reservation would belong to them and their children; that enough land would be reserved for them and their descendants for all purposes; that no other Indians would have any right therein; and that no allotments would be made immediately out of the land reserved. The minutes further show that a line was drawn on paper which the Indians said marked the reservation which they wished to have; that after further consultations between the commissioners and the Indians the line marking the part to be reserved was agreed upon; and one of the commissioners then said there was some doubt whether the Government would approve of their yielding so much, but "we will do the best we can". From the evidence as a whole the court below found that "the statements of the commissioners at the council meeting prior to the execution of the agreement (instrument of cession) were such that the Red Lake Indians would and did understand therefrom that they were not ceding any portion of their lands which in the agreement was specified as reserved".

November 8, 1892, the chairman of the commission, in a letter to the Commissioner of Indian Affairs, stated in substance that the commission had used an unofficial map to guide it and the Indians in bounding and describing the land which was being reserved from the Red Lake Reservation; that this map was faulty and misleading in respect of the lower Red Lake around which part of the tract intended to be reserved was located; and that to "preserve faith with the Indians" he recommended that certain described lands omitted from the reservation made by the commission "be reserved from sale and added to said reservation." In further support of his recommendation he said "It was with great reluctance that they (the Indians) gave up any part of the upper lake, and if any part of the lower lake shall be taken from them they will think they were deceived or advantage taken of their ignorance". This

letter was laid before the President with approving letters from the Commissioner of Indian Affairs and the Secretary of the Interior, and on November 21, 1892, the President made an Executive Order reserving the described lands from sale and adding them to the reservation made by the commission. The added lands comprised 2,303 acres theretofore included, apparently unintentionally, in the cession by the Red Lake Indians.

Continuously since the making of the Executive Order the lands thereby added to the reservation made by the commission have been treated by the United States as a part of that reservation, and the reservation as thus changed or corrected has been known as the diminished Red Lake Reservation.

No allotments in severalty have as yet been made on this diminished reservation, because the Red Lake Indians have thus far opposed the present making of such allotments and the administrative officers have not as yet considered it practicable to make them.

By an act of February 20, 1904, c. 161, 33 Stat. 46, 48, Congress modified and adopted an agreement negotiated by an United States Indian inspector with the Red Lake Indians whereby the latter ceded to the United States a tract containing 256,152 acres out of the diminished Red Lake Reservation. This cession was in trust that the lands be sold by the United States and the proceeds be placed in the Treasury of the United States in a trust fund to the credit of the Red Lake Indians and be paid to them in stated installments. Articles 4 and 5 of the agreement declared:

"It is further agreed that the said Indians belonging on the said Red Lake Indian Reservation, Minnesota, shall possess their diminished reservation independent of all other bands of the Chippewa Tribe of Indians and shall be entitled to allotments thereon of one hundred and sixty acres of either agricultural or pine land, the different classes of land to be apportioned as equitably as possible among the allottees."

"It is understood that nothing in this agreement shall be construed to deprive the said Indians belonging on the Red Lake Indian Reservation, Minnesota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement. It is the intention of this agreement that the United States shall act as trustee for said Indians to

dispose of said land and to expend and pay over the proceeds as received from the sale thereof only as received, as herein provided."

The United States has been holding and now holds the diminished Red Lake Reservation and all monies derived therefrom, for the sole and exclusive benefit of the Red Lake Indians, and not for the benefit of the Chippewa Indians of Minnesota, who brought this suit.

The tract reserved by the commission out of the Red Lake Reservation at the time of the cession under the act of 1889 contained 661,118 acres. The lands added to this reserved tract by the Executive Order of November 21, 1892, comprised 2,303 acres, making the so-called diminished Red Lake Reservation contain 663,421 acres. The tract ceded from this diminished reservation by the Red Lake Indians in the agreement embodied in the act of February 20, 1904, contained 256,152 acres.

The number of Red Lake Indians belonging to the Red Lake Reservation was, on March 4, 1890, 1,168; on February 20, 1904, 1,418; on February 26, 1927, the date of suit, 1,736; and, in 1932, 1,881.

In many acts passed since March 4, 1890, and cited in Findings 34, 35 and 36 of the court below (80 C. Cls. 410, 455-458), Congress has recognized the Red Lake Indians as entitled, exclusive of other Chippewas, to the diminished Red Lake Reservation and to all proceeds therefrom.

Other matters shown in the findings will be mentioned later on.

The claims presented by the plaintiffs' petition and pressed in the court below were overlapping in part and substantially to the effect, first, that the lands reserved by the commission out of the Red Lake Reservation were only temporarily reserved for the purpose of making allotments to the Red Lake Indians at the time, in the quantity and of the character specified in the act of 1889; that subject only to such filling of these allotments the lands reserved were included in the cession and became part of the estate which the United States was to hold in trust for the benefit of all

the Chippewa Indians in Minnesota; and that by subsequently failing to make any allotments from the reserved lands and permanently appropriating all of them, through the act of February 20, 1904, to the use and benefit of the Red Lake Indians, to the exclusion of all other Chippewas, the United States wrongfully disposed of the lands in disregard of its trust obligations and of the rights of the plaintiffs, and thereby became liable to the plaintiffs for the value of the lands, or at least for the value of such of them as were not needed to fill the allotments which were to be made from them; secondly, that by adding to the reserved lands, through the Executive Order, 2,303 acres which had been included in the cession, the United States wrongfully withdrew the added lands from the trust estate and appropriated them to the use and benefit of the Red Lake Indians, to the exclusion of all other Chippewas, thereby becoming liable to the plaintiffs for their value; and, thirdly, that by the act of February 20, 1904, the United States wrongfully took 256,152 acres of the reserved lands from the trust estate and applied them to a new and different trust for the benefit of the Red Lake Indians, to the exclusion of all other Chippewas, and thereby became liable to the plaintiffs for the value of such of them as were not sold and for the proceeds from such as were sold.

From the findings made and from an examination of the instruments of cession and of the treaties, statutes and public documents referred to in the findings, the court below reached the conclusion that up to the time of the cession under the act of 1889 the Red Lake Indians had the full Indian title to the Red Lake Reservation, to the exclusion of all other Chippewas; that the lands reserved by the commission were not included in the cession, but explicitly reserved therefrom, and therefore the Indian title to them remained in the Red Lake Indians; that the lands which the Executive Order added to those which were so reserved were by mutual mistake included in the cession instead of being included in those reserved, and therefore the Executive Order should be regarded as having appropriately corrected that mistake and made effective the true intention of the parties; and that in these circumstances the plaintiffs were not injured or entitled to recover by

reason of any of the matters complained of, and their petition should be dismissed.

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1. Complaint is made of the action of the court in regarding the Indian title to the lands in the Red Lake Reservation prior to and at the time of the cession as material. Plainly the complaint is without merit. Whether the title was in the Red Lake bands alone or in all of the Minnesota bands has a material bearing on the construction and effect of the cession, and also on the question of who, after the cession, had the title to the lands reserved.

2. Complaint is next made of the holding that the Indian title prior to and at the time of the cession was in the Red Lake bands. While there appears to have been some diversity of opinion on this question, we are of opinion that the court's solution of it is right. For a long period the Red Lake bands had been in the exclusive occupancy of the lands in the Red Lake Reservation. None of the other Minnesota bands disputed this occupancy or the right to it. Some had in treaties relinquished all right to areas which included that reservation,[7] and others had recognized the occupancy and title of the Red Lake bands by both ceding and accepting adjacent lands expressly described as bounded on "the line of the Red Lake Reservation".[8] The officers of the United States charged with the administration of Indian affairs also had recognized, repeatedly and consistently, the occupancy and title of the Red Lake bands. Typical of such recognitions is a letter of January 8, 1889, by the Commissioner of Indian Affairs, which was written with the approval of the Secretary of the Interior for the information of the President. In the letter it was said: "None of the Indians in that State, except the Red Lake Indians, have any right, title or interest in the Red Lake Reservation".

The recognition of a Chippewa band as having title to a reservation occupied by it was not confined to the Red Lake bands or to the Red Lake Reservation. On the contrary, it had long been the settled rule in respect of the Chippewa Indians in Minnesota that

[7] Treaties September 30, 1854, 10 Stat. 1109; February 22, 1855, 10 Stat. 1165; August 7, 1866, 14 Stat. 765.

[8] Treaty May 7, 1864, 13 Stat. 693; Executive Order March 18, 1879, concerning White Earth Reservation. Executive Orders Relating to Indian Reservations (1912), p. 87.

a band or bands occupying a separate reservation should be regarded and dealt with as having the full Indian title to the lands therein. The Indians both recognized and gave effect to the rule. Many cessions were negotiated and carried out in conformity with it. The band or bands occupying a reservation ceded it in whole or in part without any participation by other bands and received and enjoyed the compensation without sharing it with others. Under the rule each of the bands existing in 1889 had theretofore made cessions and received pay therefor quite independently of the other bands. By a treaty of October 2, 1863, 13 Stat. 667, the United States negotiated a treaty with the Red Lake and Pembina bands whereby these bands ceded to the United States a described part of the lands then "owned and claimed by them", and the United States, in consideration of the cession, agreed to pay "to the said Red Lake and Pembina bands" a stated sum per annum for a limited period. In Article 6 of the treaty the lands not ceded were called "the reservation", and thereafter were regarded by the United States and the Indians as constituting the Red Lake Reservation.[9] The treaty of 1863 was confirmed, with modifications not material here, by a treaty of April 12, 1864, with the same Indians, 13 Stat. 689. No other band participated in that cession or shared, or sought to share, in the compensation.

This array of matters making strongly for full Indian title in the Red Lake bands prior to and at the time of the cession of 1889 encounters direct contradiction in the report made to the House of Representatives by its committee on Indian affairs when presenting the bill which, after many amendments, became the act of 1889.[10] In that report it was said:

"All of the Indians in Minnesota are members of the great Chippewa family, which has for generations occupied the northern and northeastern half of the State. There are now in all about 7,500 of these Indians, who occupy reservations and unceded lands amounting in the aggregate to about 4,700,000 acres of land.

. . . . . .

"The so-called Red Lake Reservation is simply a remnant of unceded Indian territory occupied at present by the Red Lake

[9] Minnesota *v.* Hitchcock, 185 U. S. 373, 389-390; United States *v.* Holt State Bank, 270 U. S. 49, 58.

[10] House Report No. 789, 50th Congress, 1st Sess.; Cong. Rec., 50th Congress, 1st Sess., Vol. 19, pt. 9, pp. 9130-9131.

band, but really the common property, so far as the Indian title is concerned, of all the Chippewa Indians in Minnesota.

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"All the Chippewas in Minnesota really belong to one family, and this Red Lake Reservation is really a remnant of all that country once occupied by them in common, and thus a sort of common property."

In so far as the committee report states that the title to the lands in the Red Lake Reservation was held in common by all of the Chippewa Indians in Minnesota, rather than by the Red Lake bands, it is at variance with what is otherwise indubitably shown, and evidently is based on a serious misapprehension of the real situation. It overlooks treaties wherein most of the other bands relinquished areas which included the lands in the Red Lake Reservation; takes no account of the rule, long applied by the government and the Chippewa Indians, whereby a band or bands occupying a separate reservation were regarded as having the title to the lands therein and entitled to hold or cede them independently of other bands; puts aside the treaties of 1863 and 1864 which recognized the Red Lake and Pembina bands as owning the lands occupied by them, and also as entitled to make cessions therefrom without consulting other bands; fails to consider the absence of any claim by other bands to an interest in the lands of the Red Lake Reservation; and gives no effect to a formidable body of legislative and administrative action and opinion whereby the Red Lake bands, and they alone, were uniformly recognized as both occupying and having the Indian title to the lands in that reservation. It therefore is plain that the report cannot be taken as overcoming the facts otherwise indubitably shown.

3. Next it is insisted that even though the Indian title was in the Red Lake bands, Congress, in § 1 of the act of 1889, declared that as to the Red Lake Reservation the cession should be sufficient if made by "two-thirds of the male adults of all the Chippewa Indians in Minnesota", and thereby enabled the Chippewas as a whole to cede that reservation, even over the objection of the Red Lake bands. To this we do not agree. Our decisions, while recognizing that the government has power to control and manage the property and affairs of its Indian wards in good faith for their welfare, show that this power is subject to constitutional limitations

and does not enable the government to give the lands of one tribe or band to another, or to deal with them as its own.[11] And, of course, an act of Congress should not be given a construction which will imperil its validity where it is reasonably open to a construction free from such peril.[12] The provision in § 1 of the act of 1889, on which the appellants rely, is, in our opinion, reasonably open to a construction certainly consistent with its validity. The section directs the commission to negotiate with "all the different bands" for a cession of all of the reservations, except parts of two, and then provides that the cession shall be sufficient "as to each and all of said several reservations, except as to the Red Lake Reservation", if made by two-thirds of the male adults of the band occupying and belonging to such reservation, and "as to the Red Lake Reservation" shall be sufficient if made "by two-thirds of the male adults of all the Chippewa Indians in Minnesota". A fairly admissible meaning of this is that negotiations were to be had with each and all of the bands, including those occupying the Red Lake Reservation; that the cession as to each reservation was to be by at least two-thirds of the male adults of the band occupying the same; and that as to the Red Lake Reservation the cession was to be not only by two-thirds of the male adults of the bands occupying that reservation but also by two-thirds of the male adults of all the Chippewa Indians in Minnesota. To save the section from questionable validity, this meaning should be preferred to one involving a purpose to authorize a cession as to that reservation without the assent of the bands occupying it. The additional requirement as to it that the cession have the assent of two-thirds of the male adults of all the Chippewa Indians of Minnesota may well be regarded as precautionary and intended, in view of the statements in the committee's report, to accomplish a cession which would be effective whether the title was in the Red Lake bands, as the administrative officers were holding, or was held in common by all the Minnesota Chippewas, as the committee stated. In this view of the section—which we think the right one—the act cannot be held to evince a purpose to take from one band without its assent and give to others

[11] Lane v. Pueblo of Santa Rosa, 249 U. S. 110, 113; United States v. Creek Nation, 295 U. S. 103, 109-110; Shoshone Tribe v. United States, 299 U. S. 476, 497.

[12] Panama R. R. Co. v. Johnson, 264 U. S. 375, 390; Anniston Mfg. Co. v. Davis, (this day decided).

The commission evidently understood the provision as we do, for they went first to the Red Lake bands and there announced that the negotiations, if not resulting in the requisite assent of those bands, would be abandoned.

4. It is further insisted that the court erred in holding that none of the lands described in the instrument of cession as reserved by the commission for allotments was ceded, instead of holding that all were ceded, save those actually required to make and fill allotments at the time, in the quantity and of the character described in the act of 1889. We regard the holding as right. The act was not intended to secure a cession of all of the Red Lake Reservation, but only of so much of it as "in the *judgment of said commission*" was not required to make and fill the intended allotments, and was not "reserved *by the commissioners*" for that purpose. And the allotments were to be made, not within any definite period, but "as soon as practicable". The instrument of cession declared that the Red Lake bands ceded all of their reservation not included within designated boundaries and that the lands embraced within those boundaries had been reserved by the commissioners for the purpose of making and filling allotments. Thus it showed what lands were ceded and what were reserved. The act committed to the "judgment of the commission" the determination of how much and what would be required for allotments, and laid on the commissioners the duty of reserving lands accordingly. The instrument of cession shows that the commission attended to these tasks. Whether the tasks were performed with appropriate wisdom is not open to inquiry in this suit. The instrument of cession, showing the lands ceded and the lands reserved, was examined by the Commissioner of Indian Affairs and the Secretary of the Interior and was then submitted to and approved by the President. With that approval it became effective. The lands which were reserved were not ceded, either by the terms of the instrument of cession or through the operation of the act. The Indian title to them remained after the cession, as before, in the Red Lake bands. The act contemplated their use in making allotments to members of those bands; but, as they were not ceded but reserved from the cession, the matter of whether and when they shall be allotted rests with the government and those bands and is not of any concern, in the sense of the law, to the other bands.

The cession of the Red Lake Reservation by the Indians of the other reservations differs in words from that by the Red Lake bands, but we regard them as in substance identical and as conforming to the act.

5. Error is also assigned on the court's ruling respecting the Executive Order of November 21, 1892, whereby 2,303 acres of the lands ceded under the act of 1889 were added to the lands reserved for allotments. The basis for this order, shortly stated, is that the lands so added were intended by the commission and the Indians to be included in the lands reserved and were by mutual mistake, incident to the use of an unofficial and faulty map, included among those ceded. Evidently the Red Lake bands were equitably entitled to have the mistake corrected. No intervening right stood in the way. The mistaken cession was to the United States, in trust for the ultimate benefit of Indian wards. In this situation we should hesitate a good deal before holding that the President's authority over Indian affairs is not broad enough to warrant a correction of the mistake by an Executive Order.[13] But, this aside, the appellants are without right to recover in respect of the lands which were the subject of the mistake. Save for it the lands would have been reserved, not included in the cession. Therefore, the appellants' interest in them through the cession and trust was colorable only, and in an appropriate proceeding, brought with the consent of the United States, the mistake could and doubtless would have been corrected. So, in no admissible view of the Executive Order can it be said to have worked any real injury to the appellants.

6. So much of the appellants' claim as is grounded on what was done by and under the act of February 20, 1904, is disposed of adversely to them by what already has been said respecting the title to the lands reserved from the cession of 1889.

It results that the judgment must stand.

Judgment affirmed.

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[13] Rev Stats. §§ 463, 465; West *v.* Hitchcock, 205 U. S. 80, 84-85; Williams *v.* United States, 138 U. S. 514, 524; Knight *v.* U. S. Land Assn., 142 U. S. 161, 177, *et seq.*; United States *v.* Mid-West Oil Co., 236 U. S. 459, 469, *et seq.*